

REDIRECT EXAMINATION

BY MR. GENO:

Q Mr. Reardon, if Choctaw sold the spectrum for \$1, I guess that'd cure the windfall arguments, wouldn't it?

A Yes.

Q We wouldn't have to deal with those.

Can you think of any logical coherent reason why Choctaw would sell the licenses for less than the amount of Choctaw's debt?

A I cannot.

Q In connection with the last question about the turned in licenses, it's -- did Maritime lose anything by voluntarily turning those back in?

A No.

Q How did it help -- make that process more administratively efficient by turning those in?

A Just as I mentioned in my deposition, it cut in maybe in half, the number of call signs which were the subject of what we call USG (ph) in the administrative law hearing. And so it greatly streamlined the case, and that's why both we and the enforcement bureau agreed to do that, to streamline the case.

Q Your deposition one last time, this is page 116 that we didn't quite get to during your cross-examination. And I'll play the role of Mr. Ruhl here.

1 Page 116, line 8, question was,

2 "Can you tell me why -- what led to the debtor's
3 decision to file bankruptcy?"

4 And what was your answer?

5 A "As I testified earlier, the debtor didn't have
6 any money in the bank. Had not been able to pay its
7 obligations, its fundamental obligations, office rents,
8 employees, salaries, cell phone bills, that sort of thing."

9 Q "Question, you are saying that's the primary
10 reason why the debtor filed bankruptcy?"

11 And your answer?

12 A "My understanding is that is the lack of cash is
13 the main reason, yes."

14 Q Thank you.

15 In the voice mail message that you left with the Denton
16 County CoServe representative, Mr. Reardon, what did you
17 mean by Sandra or Ms. DePriest, whatever you call her, had
18 walked away or was going to walk away?

19 A Yes, what I meant was walk away from her equity in the
20 company, her ownership interest.

21 Q And her debt?

22 A Yes.

23 Q She certainly hasn't walked away from participating in
24 the bankruptcy, has she?

25 A She has not. She's here today, and has been here in

1 all of these proceedings.

2 Q As I understand it, Mr. Reardon, if Choctaw or as
3 hopefully when Choctaw sells the spectrum and receives the
4 proceeds, it never gets 100 percent of those dollars, does
5 it?

6 A No. As I understand it, the money goes to a
7 liquidating agent, who then determines, you know, who gets
8 the money under the plan. I think that's the way it works.

9 Q Choctaw at least initially shares those proceeds with
10 the administrative expense claims?

11 A Yes, it does. It shares those proceeds according to
12 that waterfall, so you know, if \$3 million of sales is
13 brought in, then a certain percent goes to administrative
14 proceeds. It also shares those proceeds and pari passu with
15 other secured creditors like Mr. DuPree there, so yes, it
16 shares the proceeds.

17 Q And Mr. McCullough's client, NRTC?

18 A And NRTC as well. I didn't mean to leave you out,
19 yeah.

20 Q Do you know why Choctaw would agree to hire you and
21 give you severance pay if it did not intend to pursue Second
22 Thursday application with the FCC?

23 A I don't know why it would do that, unless it intended
24 to move forward, no.

25 MR. GENO: No further questions. Thank you, Mr.

1 Reardon.

2 THE COURT: Mr. Reardon, you may stand down.

3 THE WITNESS: Thank you, Your Honor.

4 THE COURT: Who will your next witness be?

5 Mr. Geno, who will your next witness be?

6 MR. GENO: Call Bob Keller, Your Honor.

7 THE COURT: All right. Mr. Keller, come up and
8 let the clerk administer the oath.

9 THE CLERK: Please (indiscernible).

10 ROBERT KELLER, WITNESS, SWORN

11 THE CLERK: Please be seated.

12 THE COURT: Mr. Geno, I think at this point you
13 need to really go into Mr. Keller's qualifications and what
14 is his testimony is expected to be, and then we'll address
15 the issues in the motion to exclude.

16 MR. GENO: Thank you, Your Honor.

17 DIRECT EXAMINATION

18 BY MR. GENO:

19 Q Mr. Keller, will you state your full name for the
20 record, please, sir?

21 A Robert J. Keller.

22 Q Where do you live?

23 A Bethesda, Maryland.

24 Q Mr. Keller, would you give us your formal educational
25 background, please?

1 A Yes. I graduated college in 1975, Catholic University
2 in Washington, Law School in 1979, same school, JD.

3 Q Tell us your career path once you graduated law school?

4 A Well, let me see, I was at the time I graduated sort of
5 an intern at the FCC, but shortly thereafter I worked for a
6 small communications law firm dealing primarily in what was
7 called land mobile matters. We later came to call those
8 wireless.

9 After a few years there, I went on to a boutique firm
10 that specialized in communications law. Worked there for a
11 number of years. So I started in 1979, but I graduated.

12 In about 1994, I left that firm and started my solo
13 practice. So for the last 30 plus years, I've been
14 practicing communications law.

15 Q All right. On the screen before you is your resume,
16 Mr. Keller, can you identify that for us?

17 A Yes, that is my resume, yes.

18 Q Any other career path, career points you want to point
19 out to us you haven't already mentioned?

20 A Well, I was also an adjunct faculty member at the
21 Institute for Communications Law Studies, which was a
22 special funding the Catholic Law School for training
23 communications attorneys. And I (indiscernible) 11 or 12
24 years there, taught a course in wireless communications
25 regulation, which I also developed the course and taught it.

1 Q Are you a member of any Bar Association?

2 A I'm a member of the Federal Communications Bar

3 Association in addition to, of course, being licensed with
4 the D.C. Bar.

5 Q What has your practice primarily consisted of since
6 graduating from law school, Mr. Keller?

7 A Well, it's been exclusively communications law related
8 matters. Mostly practice before the FCC in federal courts,
9 and it's focused primarily on, as I said, wireless type
10 licensing, cellular, SMR, microwave, those sorts of things.
11 It's (indiscernible) a little bit of broadcast, some
12 telecommunications like common carrier stuff, but primarily
13 wireless telecommunications systems.

14 Q All right. Have you represented the debtor, Mr.
15 Keller, before and after the bankruptcy case was filed in
16 connection with FCC matters?

17 A Yes. I was retained to handle the (indiscernible)
18 hearing before the FCC within a month or two after it was
19 issued, I don't remember the exact time.

20 Q Have you been retained to represent the debtor in any
21 respect in the bankruptcy case?

22 A Yes, and I'm continuing to represent them. I got
23 approved by the Court to be the debtor's special FCC counsel
24 for purposes going forward after the petition --

25 Q You're not bankruptcy counsel?

1 A No, I'm not bankruptcy counsel, special FCC counsel.

2 Q All right. Mr. Klein -- Mr. Keller, have you obtained
3 a waiver from your client with respect to your expert
4 testimony so that you can give adverse opinion testimony if
5 called for?

6 A Yes.

7 Q And is it my understanding that you have been
8 designated by the debtor as an expert witness in the area of
9 FCC communications law and especially with respect to the
10 doctrine of Second Thursday and its application to the facts
11 of this case?

12 A Yes, that and plus all the things related to getting
13 FCC approvals therefore.

14 MR. GENO: Your Honor, we tender Mr. Keller as an
15 expert in the area of FCC communications law, with special
16 emphasis on Second Thursday Doctrine as it applies to this
17 case.

18 THE COURT: All right. Mr. Ruhl, let me hear and
19 get your objection on the record then. I've seen your
20 motion and read the Lippey versus Barnco Corporation case.
21 I'm ready to hear your comments or any questions you have of
22 the witness right now.

23 MR. RUHL: Thank you, Your Honor.

24 THE COURT: About his qualifications.

25 MR. RUHL: Yes, sir.

VOIR DIRE EXAMINATION

BY MR. RUHL:

Q Mr. Keller, the expert opinion or opinions that you intend to offer if you're qualified and allowed to offer by the Court regard in part at least whether or not Second Thursday applies and whether the debtor could qualify for it under its plan; is that right?

A I believe that's correct, yes.

Q Okay. That is one of the issues that you will be an advent advocating for in front of the FCC on behalf of the debtor; isn't that right?

A Well, not yet because it hasn't become -- all I've done at the FCC thus far is inform the judge that we're going to be seeking it, and asked him to stay the hearing proceedings pending that.

Q Okay.

A But we haven't been able to go any further than that.

Q You intend to continue on as debtor's bankruptcy counsel on the Second Thursday issues if they ever come before the FCC; isn't that right?

A I assume so, but I'll be honest with you I don't understand exactly how things work post confirmation, but at that point, it would be a joint filing by the debtor and the proposed buyer. So I assume it would be two sets of lawyers involved at that point.

1 MR. RUHL: Your Honor, I will proceed with my
2 motion when you want me to. That's the only qualification
3 type questions or voir dire --

4 THE COURT: All right. Let me ask you, Mr.
5 Keller, to stand down for a moment then. Let's address this
6 issue.

7 All right. Let me hear your comments about your
8 position to exclude his testimony in this specialized area?

9 MR. RUHL: Well, Your Honor, we don't object to
10 the qualifications. Our objection is based, as we discussed
11 in our motion to exclude him, on the fact that he is special
12 counsel for the debtor. And under the cases we cite in our
13 motion, Docket No. 846, we think that it is inappropriate
14 for Mr. Keller to offer here today to the Bankruptcy Court,
15 the opinions that he's been designated to offer if he's
16 allowed.

17 And particularly, we discuss in our case, the
18 BarenCo (ph) case or -- if that's the way you say it, which
19 as we read it, at least that Court in the Southern District
20 of New York prohibited some of what Mr. Keller to attempt
21 at, as both an advocate and a witness on the debtor's
22 behalf, because that would render under Rule 702 and Dalbert
23 and related law, his proposed testimony unreliable,
24 untrustworthy and unfit to assist the trier of fact.

25 And we think this -- the -- I'll call it the

1 Lippey case, because it's easier for me to announce, we
2 think it's on all fours, and that as they say, the expert
3 role is to assist the trier of fact by providing
4 information, explanations. The expert is not to be an
5 advocate, and when an expert witness has become partisan,
6 subjectivity, objectivity is sacrificed to the need to win.

7 And that Court found it would be most
8 inappropriate to permit that lawyer who had advocated or
9 consulted as an attorney with the client in that case, it
10 would be inappropriate for them to testify as an expert
11 witness about the very matters he helped develop as a lawyer
12 advocate, we think that's exactly what's going on here.

13 There's other cases that we cited in our
14 footnotes. The Ziggety Systems, Inc. (ph) case from the
15 Eastern District of Pennsylvania, concluding that an
16 attorney with a direct interest in the case lacks
17 credibility from that deficiency only. The Glaxo Smith
18 Klein (ph) case, the Court disqualified an expert from
19 testifying, where the expert had served as plaintiff's trial
20 attorney, because the testimony couldn't be considered as
21 independent of his clients, due to his role as an attorney.

22 For those reasons, and based on those cases, Your
23 Honor, we think that Mr. Keller should be excluded on those
24 grounds apart from his qualifications.

25 THE COURT: Okay. I understand. Mr. Geno, any

1 comments you want to make?

2 MR. GENO: Briefly, Your Honor. We already know
3 in Section 6264 commenting on this says the most difficult
4 question concerning the application of Rule 702
5 (indiscernible) requirement is whether the reliability of
6 the expert opinion is a factor in deciding admissibility.

7 Section 6262 of Bright and Miller (ph) says,
8 however, Rule 702 on its face creates no general pile on the
9 trial judge to exclude expert testimony on the grounds it is
10 unreliable. This reflects basic policies of the evidence
11 rules in several respects.

12 First, it is typical the rules' literal approach
13 toward admissibility to limit the gatekeeping powers of the
14 trial judge. This philosophy is strongly represented in
15 Article 7.

16 Second, the absence of a reliability requirement
17 for admission informs that (indiscernible) to evaluate the
18 credibility of witnesses and give testimony's proper weight,
19 primarily reside with the trier of fact.

20 Finally, opposing such power of the jury, the
21 Court here with no jury, rather than the Judge, is
22 consistent with an assumption made throughout Article 7 -- 6
23 and 7 of the evidence rules. Juries -- the Court here,
24 generally have the ability to accurately weigh evidence and
25 evaluate witness credibility. Thus, the absence of a

1 reliability requirement in Rule 702 reflects the conclusions
2 that ascending the terms of a provision otherwise met,
3 accurate fact finding usually promoted by letting the trier
4 of fact hear expert testimony.

5 Accordingly, the most common judicial response to
6 attacks on reliability of expert testimony is that such
7 matter to go to weight, not admissibility.

8 Mr. Keller has stated that he has obtained a
9 client waiver authorizing him to give an adverse opinion if
10 needed. He is not counsel in the bankruptcy case. There is
11 an issue of necessity here, Your Honor, the debtor -- two
12 grounds. The debtor has no funds available to hire an
13 outside expert, first. And second, we get this objection
14 the day before the hearing, clearly in the absence of time
15 to go find another expert.

16 The other side has known about Mr. Keller's
17 testimony for at least a week, week and a half, maybe even
18 two weeks, and that he was going to be designated as an
19 expert and filed a motion to exclude it at the last minute
20 prejudices the debtor and the Court because we don't have
21 time to go find an expert, even if we can scrounge up the
22 money to hire and pay one.

23 THE COURT: All right. Well, I saw this for the
24 first time last night after returning from Houston, and
25 immediately got right on it to make this determination,

1 because it again is a serious question. But it makes me
2 think about the realities of any expert witness as to
3 whether or not that expert is really truly disinterested in
4 any scenario, because that's why the expert's there, is
5 because he is espousing the position that the person that
6 hired him wants that person to espouse.

7 Sometimes experts are even more partisan than
8 their employers, but -- and that's a real world look at it,
9 although it's nice to say that every expert's going to be
10 completely disinterested and impartial. That's really not
11 the way it works.

12 In the Lippey versus BarenCo case, it was an
13 interesting case. It was a law professor who had signed on
14 as a lawyer to consult with a particular client to testify
15 about whether certain conveyances were fraudulent to get
16 assets away from a party that was being sued for asbestos
17 violations.

18 The Court in that case, I think it's counted for
19 the record, said, "In addition at this point, in light of
20 what discovery has revealed, I have no confidence that
21 Carney," and that was the lawyer expert witness, "could
22 limit his testimony to permissible areas. As he made clear
23 in his deposition, the entire focus of his report was upon
24 his thesis that defendants real purpose in entering the
25 transaction was to hide assets, and it was still his belief

1 that the business purpose of the transaction was going to be
2 the substance of his trial testimony. I do not believe that
3 the defendants --" excuse me. "I do not believe that he can
4 now sanitize from any testimony his views as to defendant's
5 motivation and his credibility of their witnesses."

6 He's going to testify about the credibility of the
7 defendant's witnesses, too, that even shocked me.

8 "Moreover because of his advocacy on behalf of
9 plaintiff's counsel, and legal advisor, I do not believe he
10 can now testify with detachment and independent that one
11 would respect an expert witness when offering views as a
12 professional."

13 And then the Court says, "Of course, many expert
14 witnesses are biased, and the lack of bias is not required
15 for the expert testimony to be admissible."

16 And that's just what I said a moment ago. In this
17 particular case, Mr. Keller is not bankruptcy counsel
18 attempting to gain confirmation in this hearing today. He's
19 been employed for a very special purpose, and that is to
20 assist with the FCC proceedings. And he's been offered as a
21 witness to just give his FCC expertise about the
22 possibilities of Second Thursday treatment and proceedings
23 before the FCC.

24 He's also been given a waiver by the debtor client
25 if he is asked a question, he's got to answer it fairly.

1 This is a close question. You don't like to have lawyers
2 testifying in cases when they're representing a client. In
3 fact, the general rule is that when a lawyer learns he's
4 going to be a witness in a case, he ought to withdraw, and
5 then allow some other lawyer to take the case forward.

6 Well, here, it's a little too late for Mr. Keller
7 to do that. He's here today and I saw this last night, but
8 be it as it may, the Lippey versus BarenCo case was tried
9 before a jury, and that's what the Court was primarily
10 concerned, that this witness, this lawyer witness was going
11 to be commenting on the credibility of the other side's
12 witnesses, and was going to be giving his legal conclusions
13 about the ultimate issue in this case, whether fraudulent
14 conveyances had indeed occurred. That case is completely
15 distinguishable from what we have here today.

16 The motion to exclude Mr. Keller's testimony is
17 overruled. I'll permit him to testify. I certainly
18 understand that he's been employed to assist Maritime in its
19 FCC proceedings, but I think that with cross-examination,
20 it's much better to have that, than to have Mr. Keller stand
21 up there and argue from the podium without any cross-
22 examination, and give me the very same information that he
23 could give, and at this time, under oath, on the witness
24 stand, subject to cross-examination.

25 So with that further addition, the objection to

1 his testimony is overruled. All right. Let's take about
2 ten minutes here. I'll let you collect your thoughts and
3 we'll see what happens.

4 (Recessed at 3:19 p.m.; reconvened at 3:41 p.m.)

5 THE COURT: All right. Mr. Keller, you're still
6 under oath, having been previously sworn. Mr. Geno, direct
7 examination.

8 MR. GENO: Thank you, Your Honor.

9 DIRECT EXAMINATION, CONTD.

10 BY MR. GENO:

11 Q Mr. Keller, have you been retained by Maritime in this
12 case to give an opinion with respect to the applicability of
13 the Second -- the doctrine of Second Thursday to the
14 contemplated transactions under the plan of reorganization?

15 A Yes.

16 Q Tell me why you did to prepare for your opinion?

17 A Well, the first thing I did to prepare for my opinion
18 was get deposed, because I was contacted about being an
19 expert witness about a day before the deposition was
20 scheduled on Saturday, November the 3rd. But obviously, I'd
21 already looked at Second Thursday in relationship to this
22 case beforehand, had filed a motion with Judge Sippell for a
23 stay, made the --

24 Q Who is Judge Sippell?

25 A Judge Sippell is the ALJ who has the revocation hearing

1 at the FCC. And so I'd, you know, outlined the general
2 applicability terms before that.

3 Subsequent to my deposition which was very short,
4 partly because at that time I wasn't sure what questions I
5 was going to be asked to testify to here, and part of
6 because both you and Mr. Ruhl had to catch flights, I agreed
7 with Mr. Ruhl to provide him with some additional
8 information about opinions I may offer.

9 So in preparation for that what I did was I reviewed
10 the disclosure statement, including the two proposals that
11 were in it in both Choctaw and CTI, and then I also reviewed
12 objections to the plan filed by Havens' parties and by the
13 FCC, and prepared what looks like it's before me right now,
14 this little supplemental information that I sent to Mr.
15 Ruhl.

16 Q All right. But what is the Second Thursday Doctrine?

17 A Second Thursday is a doctrine that was developed over
18 the years at the FCC that has to do with -- well, I'll back
19 up, sort of what Mr. Reardon I think already testified to
20 this morning. There is a policy under the FCC called
21 Jefferson Radio, the Jefferson Radio policy, and what that
22 policy basically states is that when there are outstanding
23 basic qualifications issues before the FCC, and at that
24 time, basic qualifications issue means some reason to
25 believe that this license -- that they should not hold

1 licenses at all for one reason or another.

2 When there are outstanding unresolved basic qualifying
3 issues, there's a general rule, the FCC will not allow the
4 licensee to sell those licenses, and realize benefit until
5 an unless those qualification issues are resolved favorably.

6 There are some exceptions to that, though, and one of
7 the most common ones is Second Thursday. And what the
8 Second Thursday Doctrine says is that where allowing to sell
9 the licenses will serve to benefit and allow recovery by
10 innocent creditors, and when there's no benefit going to the
11 charged wrongdoers, except for many minor and indirect
12 benefits which are outweighed by the public interest
13 benefits, then they will make an exception to Jefferson
14 Radio and allow such sales.

15 And the purpose is again, the public interest policy of
16 protecting the interest of innocent creditors and
17 accommodating federal bankruptcy policy.

18 Q All right. Are there basic qualifications issues
19 pending before the FCC as to Maritime?

20 A There are. There's the hearing designation order.
21 There are some issues in the case that are not basic
22 qualifying issues, such as the Issue G that was testified
23 to. But there's also a basic qualifying issue pending, and
24 it stems around whether or not there was an alleged failure
25 of Maritime to disclose certain business interests of Mr.

1 DePriest, whether this in fact, was true or rises to the
2 level of a lack of candor, impinging on the basic character
3 qualifications, and so that issue is unresolved. It's an
4 outstanding issue. It's been designated for a hearing and
5 it would normally trigger Jefferson Radio preventing a sale.

6 Q Is that what you refer to on page 1 of your report
7 that's on the screen regarding the FCC revocation hearing?

8 A Yes.

9 Q That is the next paragraph entitled Second --
10 introduced by the phrase Second Thursday, your general
11 written discussion of the Second Thursday Doctrine.

12 A Yes, that is.

13 Q All right. And on the top of page 2 of your report,
14 Mr. Reardon, you note which the Commission will allow the
15 assignment of transfer of authorizations held by a licensee
16 in bankruptcy notwithstanding unresolved basic qualification
17 issues, provided that the individuals charged with
18 misconduct will have no part of the proposed operations and
19 will either derive no benefit over the action on the
20 application, only a minor benefit, which is outweighed by
21 equitable considerations in favor of innocent creditors.

22 And are those situations present here, there is a
23 bankruptcy case, and individuals have been charged with
24 misconduct, who will have no part in the operations and
25 derive no direct benefits.

1 A Yes, I believe it is one of my opinions.

2 Q The next paragraph mentions something called footnote 7
3 consideration that we've heard something about. Tell us
4 about what that is.

5 A Well, yes, this was also mentioned earlier this
6 morning. When the Commission designated the revocation
7 hearing, the enforcement hearing, in footnote 7 of what we
8 call the hearing designation order, what has sometimes here
9 been referred to as the show cause order.

10 In footnote 7 simply because of Jefferson Radio, I'm
11 not sure whether they cited Jefferson Radio in the footnote
12 or not, but they stated they might be willing to consider
13 handling one of the applications -- let me back up.

14 In addition to designating this hearing for whether
15 certain licenses should be revoked, the Commission included
16 in the designation order a series of assignment applications
17 that were pending. These assignment applications for deals
18 that this Court has already approved, and those were
19 included in the hearing designation order precisely because
20 of Jefferson Radio that the -- that had to be resolved
21 whether or not those could be granted.

22 As to more of them, the Metro Link or the Southern
23 California Railway application, the Commission put in
24 footnote 7 that because of rail safety issues and this new
25 regulation on rail safety, they would consider whether the

1 public interest would warrant making an exception to
2 Jefferson Radio, and taking that one outside the context of
3 the hearing upon proper showing.

4 Since then, Southern California Railway did, in fact,
5 file with the Commission a request for that treatment, and
6 many, if not -- most if not all of the other applicants who
7 are all what we call critical infrastructure industries,
8 that means, you know, maybe not public safety specifically,
9 but things like rail safety, things like power grid, these
10 things that impact on national security and homeland
11 security all have the same considerations, that the same
12 public interest considerations, and they've asked for that
13 treatment as well.

14 That is pending before the Commission. And in my
15 opinion, when this plan goes forward, that in addition to
16 invoking Second Thursday itself, it would -- this
17 consideration would also be invoked as an additional public
18 interest consideration as to why the sales ought to be
19 allowed notwithstanding the basic qualifying issues. The
20 helping out the critical infrastructure public safety
21 issues.

22 Q Thank you. I note in the middle of page 2, you have a
23 discussion that begins with the phrase general opinions. At
24 the time you drafted this, if I remember correctly, Mr.
25 Keller, the Council Tree offer was still on the table. Is

1 that why you included it in here?

2 A Yes.

3 Q In the second paragraph, you set forth your opinion.
4 Will you explain what your opinion is with respect to Second
5 Thursday treatment as to Choctaw, not CTI because they're
6 not here, but as to Choctaw?

7 A Yes. And I explained that I believed that Choctaw does
8 qualify for a Second Thursday treatment, you know, the basic
9 parameters are met here. In other words, this is a company
10 who's willing to come in to acquire the license, to -- in
11 the process of going forward with this, satisfy, if not all,
12 at least enough of the claims of creditors, and there would
13 be no benefit to the persons charged with wrongdoing here,
14 mainly the principals of Maritime, Sandra and Don DePriest.
15 They've waived or foregone whatever the proper bankruptcy
16 term is, their claims, they're walking away from their
17 claims in the bankruptcy, and both -- they've represented
18 this, but the Commission would require as a condition to any
19 Second Thursday anyway, that they would have no
20 participation in the future use or any of the licenses, they
21 would receive none of the benefits.

22 And so on that basis, plus having no reason whatsoever
23 to believe that Choctaw is not basically qualified to a
24 commissioned licensee, I believe they could qualify for
25 Second Thursday treatment. It's still up to the FCC to make

1 that determination. But in my opinion, they qualify.

2 Q Even though certain of the creditors of this case hold
3 guarantees from Mr. DePriest, and even those guarantees may
4 be satisfied if Second Thursday status is achieved?

5 A Well, I'm not sure what constitutes satisfaction of the
6 guarantee. I've looked at the guarantee issue, and my
7 opinion on that is -- well, first of all, this is a -- it's
8 not an obligation of Maritime directly, it's a secondary
9 contingent obligation of Mr. DePriest.

10 The Commission has looked at this issue in the past,
11 and generally, they would consider this, in my opinion, a
12 minor or indirect benefit that is outweighed by the greater
13 public interest benefits that Second Thursday seeks to
14 achieve.

15 Moreover in this case, where there is, at least if
16 things can get resolved some time, you know, this century,
17 there's a good likelihood of 100 percent recovery or close
18 to it for all the creditors, then in that case, the
19 guarantees would become meaningless anyway. You know, if in
20 fact, there is this big windfall that some people are
21 talking about, then the guarantees would be irrelevant.

22 Q All right, sir. Page 3 you prepared the evaluation of
23 the Choctaw and CTI proposals, and of course, now we know
24 CTI's not here, so that was interesting reading, but we'll
25 skip over it to page 4, where we get to your comments about

1 Mr. Havens' objection. And what are your comments about his
2 objection as to the Second Thursday issue?

3 A Well, I believe here I limited -- there may have things
4 I said earlier that related to some of Havens' objection,
5 but in this part, as I said, I wasn't going to repeat
6 everything I'd said before, I was focusing here primarily on
7 this argument. I'm not sure I hundred percent understand
8 the argument, but it seems to be that somehow Second
9 Thursday would be inappropriate because it would somehow
10 launder or I don't know what exactly that means, but launder
11 or white wash or something his legitimate claims before the
12 FCC, and that therefore, the Court shouldn't approve this
13 plan.

14 And what I've said about that is that there's no way, I
15 mean, Second Thursday, the FCC is going to exercise its
16 jurisdiction and discretion to make a public interest
17 determination in a proceeding in which Mr. Havens will be a
18 party and have standing to object, and whatever claims he
19 makes before the FCC, if they're legitimate claims under the
20 Communications Act, the FCC will make that determination.
21 And it's only in that context that if the FCC determines
22 that those claims are without merit, they're not going to do
23 that -- in other words, he'll have the chance to make that
24 argument there. This Court has made clear, I think that
25 it's not going to get involved in those issues.

1 I think the same thing applies to whatever the claims
2 may be and whatever the rates may be in connection with the
3 bankruptcy. I mean, that's something he'll take up in the
4 bankruptcy court, and I don't see how it is that the FCC
5 Second Thursday action takes those away. I mean, if he has
6 a legitimate anti-trust claim in the New Jersey court, I'm
7 sure he'll proceed with that.

8 I'm not sure how it is that it launders his claims.
9 There was one other aspect of this though that I recall.

10 Q This is page 5, do you need to go back to page 4?

11 A No. Oh, yeah, there was also another aspect I was
12 talking about in here where he seemed to argue that the plan
13 was not feasible because Second Thursday relief couldn't be
14 granted because it almost sounded to me like from reading
15 it, was because Maritime was not qualified to hold the
16 licenses, and therefore, you grant Second Thursday because
17 of this alleged wrongdoing. And that to me seemed like
18 circular reasoning.

19 I mean, the whole point of Second Thursday, one of the
20 elements of Second Thursday is when there is an outstanding
21 basic qualifying issue, so you can't say that you're not
22 qualified to get Second Thursday treatment because there's
23 an allegation that you're not qualified to hold the license.
24 That's circular reasoning that doesn't make any sense.

25 Q In the event the FCC grants Second Thursday status,

1 what would happen with the hearing designation order or the
2 show cause order in those proceedings that are pending
3 before the administrative law judge?

4 A Well, what normally would happen, or what probably will
5 happen in this case, is that normally when happens when you
6 invoke Second Thursday is you request from the ALJ a stay of
7 the proceedings, pending Second Thursday treatment.

8 I have requested that in this case, as to all but this
9 so-called issue G. The judge has not formally granted the
10 stay in any event, but he has for all practical purposes,
11 stayed everything except issue G. He has suspended
12 discovery, and (indiscernible) on the other issues.

13 Once there is a confirmation of this plan, then I'm
14 going to go back to him and request a formal stay. We would
15 also be simultaneously going to the Commission itself
16 submitting the necessary assignment applications, along with
17 the proper showing for Second Thursday relief.

18 It's somewhat certain the Judge would grant the stay at
19 that point. There's also the possibility, I can't say for
20 sure about this right now, there's the possibility that
21 Choctaw may also request that the issue G licenses and that
22 issue also be considered under Second Thursday as well.

23 So one or two things would happen I think, most likely
24 that at a minimum, the Judge would stay the proceedings as
25 to everything but Issue G, and then we would proceed to the

1 FCC for approval.

2 If the FCC were to grant Second Thursday relief in this
3 case, the FCC because this is a commission designation
4 order, they could then render the issues moot. It wouldn't
5 have to go back to the Judge. If Issue G stays before the
6 Judge it would be tried out of Issue G is rolled into Second
7 Thursday, it would be considered there as well.

8 So basically it would then be -- ultimately, it would
9 resolve -- it would dispense for the need for the hearing,
10 the revocation hearing is what it would do.

11 Q All right.

12 A It would become moot because the (indiscernible) would
13 no longer any licenses to be revoked.

14 Q Thank you. On page 5 of your report, you discuss at
15 the bottom of the page, the guarantees. Anything else you
16 need to add to that other than what you've already testified
17 to?

18 A We're talking about the bottom paragraph?

19 Q Yes, sir.

20 A Well, the only thing I would add is just to point out
21 (indiscernible) since I didn't say it outloud, but my
22 understanding is the plan does not forgive the guarantees,
23 release from the guarantees, nor does it require any of
24 these creditors to release the guarantees.

25 So to the effect -- to the extent that there is some

1 rendering irrelevant of the guarantees, it's only going to
2 be because the claims were otherwise paid. So if this plan
3 went forward, and if for some reason there was not 100
4 percent satisfaction of the claims of creditors who have
5 these guarantees, then those guarantees would still be
6 valid. The plan does not release Mr. DePriest of those
7 guarantees.

8 Furthermore, to deny the plan on this basis, just
9 simply because some of the creditors hold guarantees, and if
10 you were going to deny Second Thursday on that basis, you
11 would be telling all the other creditors who don't have
12 guarantees, well, we're going to deny you any recovery
13 simply because of these guarantees, and I just don't think
14 that's consistent with the underlying purposes of Second
15 Thursday.

16 Q All right, sir. Let me turn your attention to page 6
17 and the first full paragraph where you discussed Mr. Havens'
18 concerns that there have been no effort to determine who
19 constitute "innocent creditors". What's your response to
20 that, Mr. Keller?

21 MR. RUHL: Your Honor, if I may, I don't have any
22 problem, I think the witness is entitled to refresh his
23 recollection with this document, but I just want to reserve
24 our right to object to its ultimate admission if Mr. Geno
25 later brings to admit it.

1 THE COURT: Okay. All right. Your objection is
2 reserved.

3 THE WITNESS: Yes. I know that one of the issues
4 that have been raised in the Havens' objection was that we
5 also -- there had been no effort to determine who the
6 innocent creditors are -- yeah, who the innocent creditors
7 are and who the alleged wrongdoers are.

8 And my first point about that is again, this is an
9 FCC issue, not a bankruptcy court issue, number one. Number
10 two, you know, while I don't think it's necessarily strictly
11 limited to this. If you go back to the original language of
12 Second Thursday of talking about the charged wrongdoers. If
13 you read the hearing designation order, any fair reading of
14 it says, that the basic qualifying issue that arises here,
15 stems from alleged lack of candor, in that there were
16 failures to disclose Mr. DePriest's business holdings or
17 certain of his business holdings, in connection with
18 geographic auction license applications that were filed in
19 2005.

20 There is absolutely nothing in the record or
21 anywhere else, or any information that I'm aware of that's
22 out there, that would suggest in any way that anybody else
23 involved in this case, including the principals of Choctaw
24 would have any reason to know about his business holdings,
25 and certainly to know or be involved in the process of

1 procuring those applications and making those disclosures.

2 Furthermore, the FCC will have this issue before
3 it. When the Second Thursday filings come before it, the
4 Commission will make that determination. If they feel there
5 is some need for some further inquiry, they will take the
6 appropriate steps at that time. But as of right now, I
7 don't believe that will happen, and I certainly have no
8 reason to believe that there's anybody else who would've
9 been aware of, much less even participated in the alleged
10 wrongdoing.

11 BY MR. GENO:

12 Q All right. Page 7 of your report talks about the FCC
13 objection. What's your response to that?

14 A I first have to recollect what it was. Well, I see
15 here --

16 Q The second paragraph?

17 A Yeah, I wanted to make sure there was nothing -- well,
18 let me just talk about that. I don't know if there's
19 anything else I said in here. I know the FCC raised and
20 other parties have raised this question of valuation, you
21 know, the value of the licenses and whether -- and I've
22 heard it from both sides. I mean I've heard, you know,
23 first of all, you know, it might be sold for \$1 or people
24 won't get recovery, but in my opinion, that's not relevant
25 first of all license assignment proceedings before the FCC

1 generally, nor in Second Thursday.

2 I mean, the FCC as a general rule does not get into the
3 valuation of licenses. In a typical assignment application,
4 there may be some exceptions to this in the broadcast
5 industry, but certainly in all the wireless services that
6 I'm aware of, including AMTS, the assignment application,
7 the contracts underlying the assignment applications aren't
8 even filed with the FCC. The FCC is not in the business of
9 second guessing the business determinations. They're only
10 interested in whether or not the proposed buyer is qualified
11 to hold the licenses. So they don't get involved in
12 valuations.

13 Furthermore, the issue under Second Thursday is not
14 whether the licenses are worth more than the amount of the
15 claims or less than the amount of the claims. The issue is
16 whether or not any of the alleged wrongdoers are going to
17 benefit.

18 Well, the only way the alleged wrongdoers could benefit
19 is if there were some illicit understanding or under the
20 table deals, if it were, if you want to call it that, that
21 well, okay, we're going to bid this, but we're going to pack
22 it. Well, that could happen even if the license were served
23 for less than the value of the claims.

24 I mean, if I'm a secured creditor and I'm receiving any
25 part of my secured claim, I'm going to be receiving money,

1 and there's some question as to what happens with that
2 money. The FCC has safeguards that it will build in,
3 conditions that it will build in to condition the grants on
4 that not happening, to ensure that that doesn't happen.

5 In this case, there's also going to be a, as I
6 understand it, a liquidating agent who is independent of,
7 and under the supervision of the Court to track the money.
8 And so whether the licenses are worth more or less really
9 doesn't come into issue. The issue is whatever money comes
10 in, whatever relationship it has with the total debt, are
11 there mechanisms to make sure that it doesn't go to illicit
12 purposes, and that'll be handled here, the same way as it is
13 in any other Second Thursday proceeding.

14 I also don't believe it is true that Second Thursday
15 only involves insolvent debtors. I don't think that's
16 necessarily true. I mean, I think, you know, it involves
17 debtors period.

18 Q All right.

19 MR. GENO: Your Honor, we ask that the report of
20 Mr. Keller be marked and entered as Debtor's Exhibit 10.

21 THE COURT: Any objection?

22 MR. RUHL: Your Honor, we do object. The report
23 is hearsay, I don't know of any exception, but the testimony
24 is fine. He can use it to refresh his recollection, we
25 object to the admission.

1 THE COURT: The objection is overruled. It'll be
2 received as Debtor's Exhibit 10.

3 (Debtor's Exhibit 10 received)

4 MR. GENO: Nothing further, Your Honor. Thank
5 you, Mr. Keller.

6 THE COURT: Mr. Lupinacci?

7 MR. LUPINACCI: We have no questions, Your Honor.

8 THE COURT: Okay. Let me get my list here. Mr.
9 Solomon?

10 MR. SOLOMON: No questions, Your Honor.

11 THE COURT: Okay. Mr. Drew?

12 MR. DREW: No questions, Your Honor.

13 THE COURT: All right. Let me see who's left
14 here? Mr. -- I'm going to change the order up a little bit,
15 Mr. Ruhl, I'm not going to forget you, I promise. Mr.
16 Spencer?

17 MR. RUHL: I wish (indiscernible).

18 MR. SPENCER: No questions, Your Honor.

19 THE COURT: All right. Mr. McCullough?

20 MR. MCCULLOUGH: Nothing, Your Honor.

21 THE COURT: Okay. And now we come back to you,
22 Mr. Ruhl.

23 CROSS-EXAMINATION

24 BY MR. RUHL:

25 Q Good afternoon, Mr. Keller.

1 A Good afternoon.

2 Q I only have a couple of questions for you I think.

3 A Uh-huh.

4 Q The first one is when were you first contacted to be an
5 expert for the debtor in this case?

6 A It was -- I think it was -- officially it was the day
7 before my deposition. I think maybe the day before that, I
8 was alerted that it was a possibility.

9 Q Okay. And when did Skytel find out that you had been
10 designated as a -- or were going to be offered as an expert?

11 A I'm not sure. Obviously it was before my deposition, I
12 don't know, I think, I don't know.

13 Q When did you first tell me that you were going to be an
14 expert witness for the debtor? Was it at your deposition on
15 November 3rd?

16 A Yes, but I mean, I assumed that you already knew that.

17 Q Okay. What's the basis of that assumption?

18 A Well, because I was contacted a day or two before the
19 deposition saying if -- basically I was contacted in an e-
20 mail or phone call or something from Mr. Geno saying, if we
21 need to use you as an expert, Danny Ruhl wants to take the
22 deposition on December 3rd, are you available, and I said
23 yes. And then the day before December 3rd, he said, well,
24 yes, we are going to the deposition.

25 So I just made an assumption maybe falsely that he had

1 told you who the witness was.

2 Q Okay. And your deposition went forward on November
3 3rd?

4 A Yes.

5 Q And when did you provide to me by e-mail the document
6 that's been introduced just now as Debtor's Exhibit 10?

7 A It was either late last week or early -- it was either
8 Friday or last week or Monday of this week, I don't
9 remember.

10 Q So if I told you I got it Monday morning of this week,
11 that wouldn't surprise you?

12 A I couldn't -- I mean, that's probably true.

13 Q Okay. And would the waiver that you said you got to
14 testify here today in writing?

15 A No.

16 Q Okay.

17 MR. RUHL: Thank you. That's all I have.

18 THE COURT: Redirect?

19 MR. GENO: No questions, Your Honor.

20 THE COURT: All right. Mr. Keller, you may stand
21 down.

22 THE WITNESS: Thank you.

23 THE COURT: Call your next witness.

24 MR. GENO: Your Honor, I was going to call Ms.

25 DePriest, but she informs me that she has a higher calling

1 that she needs to go to and be there at 6, and prepare for
2 the service. She was going to be my last witness, although
3 I was not going to rest. I was going to ask my colleagues
4 with Choctaw to put on the rest of the proof in support of
5 the plan. I'm sure Mr. Ruhl wants to cross-examine Ms.
6 DePriest probably for an extended period of time. She will
7 be here tomorrow, and I'll represent she'll be here
8 tomorrow. I don't know if you want me to start with her
9 tomorrow, or if you prefer to shift it over to the Choctaw
10 side and let them put on their part of the case.

11 THE COURT: Yeah, I'd just soon do that and shift
12 over and let Choctaw start their case, and reserve Ms.
13 DePriest for your -- the remainder of your case in chief,
14 and that can be done tomorrow and just breaking it up.

15 MR. GENO: All right. So then for the record,
16 Your Honor, the debtor does not rest, but it asks the
17 Choctaw folks to continue on with the presentation of proof
18 in support of the plan.

19 THE COURT: Okay. One thing before we do that,
20 because I just remembered, I'm not sure I said this on the
21 record, I may have, but I don't think that I did. Insofar
22 as Mr. Keller's testimony is concerned, the Court accepts
23 Mr. Keller as an expert witness for the special purpose of
24 testifying about proceeding before the FCC and the Second
25 Thursday Doctrine. I'm not sure I said that, but let's

1 clear the record for sure.

2 Mr. Lupinacci? Ms. DePriest, if you need to go,
3 you may.

4 MR. LUPINACCI: Your Honor, we'd call Pat Trammel
5 to the witness stand.

6 THE COURT: Mr. Trammel, come up and let the clerk
7 administer the oath.

8 PAT TRAMMEL, WITNESS, SWORN

9 THE COURT: Have a seat.

10 MR. LUPINACCI: Your Honor, may I approach the
11 witness and give him some water?

12 THE COURT: All right, sure.

13 DIRECT EXAMINATION

14 BY MR. LUPINACCI:

15 Q Mr. Trammel, would you state your name for the record?

16 A My name is Patrick Trammel.

17 Q And where are you employed?

18 A Southeastern Commercial Finance, LLC, Choctaw
19 Communications LLC.

20 Q What kind of business is Southeastern Commercial
21 Finance?

22 A Southeastern Commercial License is a commercial lending
23 company that does work -- independent lending and also in
24 conjunction with community banks.

25 Q Okay. And what's your position at Southeastern?

1 A I'm president.

2 Q And how long have you worked at Southeastern?

3 A Since 1996.

4 Q And were you the founding member of Southeastern?

5 A Yes, myself, and others.

6 Q Okay. Now, can you give the Judge just generally an
7 overview about your banking and lending experience from when
8 you graduated college to today?

9 A Okay. I graduated with a master's degree from the --
10 would you like me to do my --

11 Q Yeah.

12 A -- education?

13 I graduated in 1986 from the University of Alabama at
14 Birmingham with a bachelors of science degree in accounting.
15 In 1998, I graduated from the University of Alabama with a
16 masters in business administration. Upon my graduation from
17 the University of Alabama, I joined South Trust Bank of
18 Alabama in the management training program, and I was
19 employed in commercial lending area there until 1996 when
20 myself and others founded Southeastern Commercial Finance.

21 Q Okay. And you are a CPA; is that correct?

22 A Yes, sir, I am. I'm non-practicing, but I'm a CPA.

23 Q Okay. Who are the current members that you mentioned
24 that you're a founding member of Southeastern.

25 A Yes, sir.

1 Q Who are the other members of Southeastern who are
2 involved in the Maritime case?

3 A Myself, Mr. Robert H. Hollis, and Watson and Downs
4 Investments, LLC.

5 Q Okay. Now, there are other members of Southeastern who
6 have no involvement with Maritime at all, correct?

7 A Yes, sir. That's correct.

8 Q Was Don DePriest ever a member of Southeastern
9 Commercial Finance?

10 A Yes, sir, he was.

11 Q And how long was he a member?

12 A Mr. DePriest was one of the initial 12 members of
13 Southeastern, and he was a member until I believe it was
14 June 30th of this year.

15 Q Okay. And is Mr. DePriest currently a member of
16 Southeastern Commercial Finance?

17 A No, sir.

18 Q What are the circumstances upon which Mr. DePriest
19 ceased being a member of Southeastern Commercial Finance?

20 A Mr. DePriest asked for and received a loan from
21 Southeastern, I believe it may have been, I'm not -- I just
22 turned 50, Your Honor, so I don't have any memory anymore,
23 but it was 2008, I believe, 2009. And the board and the
24 other members in a board meeting said that he needed to pay
25 that back by the end of the second quarter of this year, and

1 we had secured that loan with his membership interest.

2 And so when he was unable to pay it, we foreclosed his
3 membership interest.

4 Q Okay. So 2008, 2009 Southeastern made a loan to Mr.
5 DePriest. Do you recall the amount?

6 A I believe the initial principal was \$400,000. I think
7 what eventually was foreclosed was a \$438,000 balance or
8 something along those lines.

9 Q Okay. Let me show you what I put on the screen and
10 it's marked as Choctaw Exhibit 1. Are you familiar with
11 that document?

12 A Yes, sir, I am.

13 Q Can you tell the Court what that document is?

14 A That document is actually a friendly foreclosure
15 document, I suppose. It was prepared by one of your
16 partners, and basically in this document, what our intent
17 was, was to foreclose upon the membership interest of Mr.
18 DePriest, and you know, and forgive his loan because he did
19 not have the ability to pay.

20 Q And this references that the loan balance was
21 \$438,102.76?

22 A Yes, sir.

23 Q Okay. And is that signed, it looks like, Mr. DePriest.
24 Did Southeastern Commercial Finance execute this document?

25 A We did not, but we'd be glad to. We didn't have any

1 need to.

2 MR. LUPINACCI: Your Honor, I'd offer Choctaw
3 Exhibit 1 into evidence.

4 THE COURT: Any objection?

5 (No response)

6 MR. LUPINACCI: Hearing none, it'll be received as
7 Choctaw Exhibit 1.

8 (Choctaw's Exhibit No. 1 received)

9 BY MR. LUPINACCI:

10 Q Now, Mr. Trammel, do you -- what was the value of the
11 Southeastern stock that was foreclosed in exchange for Mr.
12 DePriest's debt?

13 A At the time it was foreclosed, the book value and that
14 was certainly less than the market value was about \$570,000
15 is my memory.

16 Q Okay. And that satisfied in full under that document
17 and agreement the debt of Mr. DePriest to Southeastern?

18 A That's correct.

19 Q Okay. Now, what is your connection with Collateral
20 Plus Fund I LP?

21 A They are also a member of Choctaw Telecommunications,
22 but other than that, I have no connection.

23 Q You have no ownership interest in Collateral Plus?

24 A No, sir.

25 Q Okay. Now, you heard earlier a reference to Collateral

1 Plus in connection with some Pinnacle Bank documents. Can
2 you describe to the Court your understanding of that debt
3 and why Collateral Plus is here as a secured lender?

4 A My understanding of that is, and I don't want to speak
5 for Collateral Plus, but my understanding of that is, is
6 that at some point in time, they were approached for a loan
7 to Maritime. And Collateral Plus Fund arranged that
8 financing, and I believe offered some guarantees to Pinnacle
9 Bank.

10 And when Maritime was unable to pay that, I believe,
11 and again I'm not speaking for Pinnacle Bank or for
12 Collateral Plus I but my understanding is that Pinnacle Bank
13 called upon their guarantees at Collateral Plus I, and
14 Collateral Plus I bought the note.

15 Q Okay. And it's your understanding that Collateral Plus
16 I holds those notes that were evidenced by originally
17 Pinnacle Bank debt?

18 A Yes, that is my understanding. And that has been
19 represented to me by a representative of Collateral Plus I.

20 Q Let me show you what is in the Court's file as claim
21 49-2, which purports to be a claim filed on behalf of
22 Collateral Plus in the amount of \$9 million and some change.
23 Is it your understanding that that represents the secured
24 debt that Collateral Plus holds in this case?

25 A Yes, sir, that's my understanding.

1 Q And are you aware that Collateral Plus filed with their
2 claim, it looks like 50 pages of attachments which would
3 include their loan documents?

4 A I wasn't aware they filed that with that, but I've seen
5 those documents before.

6 Q Okay. And to your knowledge, there's been no objection
7 to this claim; is that correct?

8 A No, sir, has not been to my knowledge.

9 MR. LUPINACCI: Your Honor, I'd offer this proof
10 of claim as Choctaw Exhibit 2.

11 THE COURT: Any objection?

12 (No response)

13 THE COURT: Hearing none, it'll be received into
14 evidence as Choctaw Exhibit 2.

15 (Choctaw's Exhibit No. 2 received)

16 BY MR. LUPINACCI:

17 Q All right. Mr. Trammel, can you tell me your
18 connection or tell the Court your connection with Mr. Hayne
19 Hollis?

20 A Mr. Hollis is a minority shareholder in Southeastern
21 Commercial Finance.

22 Q And does he have an interest in Choctaw?

23 A Yes, he does. He holds a 22 and a half percent
24 interest in -- in Choctaw.

25 Q I messed you up.

1 A I'm sorry, a little nervous.

2 Q And does Collateral Plus have an interest in Choctaw?

3 A They do. They have a 45 percent interest in Choctaw.

4 Q Okay. And how is it that Mr. Hayne -- Mr. Hollis is
5 involved in this case?

6 A Mr. Hollis was a creditor of -- a secured creditor to
7 Maritime Telecommunications.

8 Q And beyond Mr. Hollis' involvement with Southeastern
9 Commercial Finance and Choctaw, do you have any other
10 involvement with him?

11 A No, sir, not on a business relationship.

12 Q I'll show you a proof of claim filed in this case, it's
13 72-3, which purports to be a file claimed by Mr. Hayne
14 Hollis, III in the amount of \$3 million and some change. Is
15 that your understanding of his secured debt in this case?

16 A Yes, sir.

17 Q And are you familiar with the loan documents that are
18 attached to this proof of claim? You've seen those before?

19 A Yes, sir, I have.

20 MR. LUPINACCI: Your Honor, I'd offer this as
21 Choctaw Exhibit 3.

22 THE COURT: Any objection?

23 (No response)

24 THE COURT: It'll be received in evidence as
25 Choctaw Exhibit 3.

1 (Choctaw's Exhibit No. 3 received)

2 BY MR. LUPINACCI:

3 Q Mr. Trammel, can you tell the Court your connection
4 with Watson and Downs, LLC?

5 A Watson and Downs is a minority shareholder in
6 Southeastern Commercial Finance, and Watson and Downs is a
7 22 and a half percent shareholder in Choctaw
8 Telecommunications.

9 Q And are you aware that Watson and Downs is a secured
10 lender to Maritime?

11 A Yes, sir, I am.

12 Q Okay. Let me show you what I'll put up here as a proof
13 of claim filed in the Court record of 75-3, that purports to
14 be a claim filed by Watson and Downs LLC in the amount of \$3
15 million and some change. Are you familiar with that debt?

16 A Yes, sir, I am.

17 Q And again, are there loan documents attached to that
18 debt?

19 A That's correct.

20 MR. LUPINACCI: Your Honor, I'll offer this as
21 Choctaw Exhibit 4.

22 THE COURT: Any objection?

23 (No response)

24 THE COURT: Hearing none, it'll be received into
25 evidence as Choctaw Exhibit 4.

1 (Choctaw's Exhibit No. 4 received)

2 BY MR. LUPINACCI:

3 Q Okay. Are you personally a creditor of Maritime?

4 A Yes, sir, I'm an unsecured creditor.

5 Q Okay. And what is the amount of your debt?

6 A \$136,000.

7 Q Now, there's been some suggestion and objections filed
8 to the plan that you and other Choctaw individuals have an
9 extensive relationship with Mr. DePriest and Mrs. DePriest.
10 What relationships do you have with the DePriests?

11 A I know the DePriests. I've known them for I guess 20
12 years or so. Mr. DePriest was a minority shareholder of
13 Southeastern Commercial Finance since -- from its inception
14 until June of this year. Mr. DePriest was not on the board
15 of directors. He did not attend shareholders meeting for
16 the past seven or eight years. And, you know, that's -- I
17 guess that's been our relationship.

18 Q And do you have any other business ventures with Mr. or
19 Mrs. DePriest?

20 A No, sir.

21 Q How did Southeastern Commercial Finance come to be
22 involved in this case?

23 A Well, you know, clearly Mr. DePriest was, at the time,
24 was a member of Southeastern. And Mr. Hollis and Watson and
25 Downs Investments was. And at the time, when the company I

1 guess -- I guess at the time when Maritime was unable to pay
2 the notes off as of the maturity date, the principals --
3 well, I guess Mr. Hollis, Watson and Downs, and others asked
4 me to see what was going on. And then when the company went
5 into bankruptcy, you know, on their behalf, I begin trying
6 to put pieces together of, you know, what would be in the
7 best interests of the creditors.

8 Q Okay.

9 A And them specifically.

10 Q I'm sorry and them?

11 A And myself, yes, sir.

12 Q Okay. Now, at some point in time, Southeastern
13 determined to be a DIP lender in this case; is that correct?

14 A That's correct.

15 Q Now, had you been asked -- had Southeastern been asked
16 to provide any financing to Maritime prior to the bankruptcy
17 filing?

18 A No, sir.

19 Q And you were first asked about a DIP loan obviously
20 after there was a DIP, after the bankruptcy, correct?

21 A That's correct.

22 Q And Southeastern determined to go ahead and make that
23 loan, correct?

24 A Yes, sir.

25 Q And you're familiar with making the DIP loans and the

1 protections you get as a DIP lender, correct?

2 A Yes, sir. We've done it at the past at Southeastern.

3 Q And the protections provided under a DIP loan were part
4 of the reasons you determined to make that loan, correct?

5 A Yes, sir.

6 Q Okay. Now, the DIP loan was funding in addition to
7 those that we -- the debt we just talked about in those
8 proofs of claim. Those were already financings that had
9 been done prior to the bankruptcy, correct?

10 A Yes, sir.

11 Q What is the balance of the DIP loan today?

12 A I believe we've made another payroll since the last
13 time I checked, but it should be between 950 and a million
14 twenty dollars I believe at this point in time.

15 Q Okay. So over the course of the bankruptcy case, that
16 DIP loan balance has increased, correct?

17 A Oh, yes, sir.

18 Q You've heard testimony earlier today about that the
19 need -- that that was the funding to continue to operate in
20 bankruptcy?

21 A That's correct.

22 Q Now, there's been some discussion today about the
23 debtor's plan and the Choctaw proposal. How were you
24 involved in the formulation of the Choctaw proposal?

25 A Well, you know, when the company went into bankruptcy,

1 you know, obviously you want to get your hands around this,
2 and I have had a limited amount of experience with
3 bankruptcy through my Southeastern business, but we wanted
4 to, you know, have discussions about that. So we engaged
5 your firm to help us with that. And also recognizing
6 they're, you know, some fairly significant FCC issues at
7 play here, you know, we went out and tried to find, you
8 know, the FCC counsel we could. And we talked to -- I think
9 we talked to a couple of firms and got some recommendations,
10 and chose Wilkinson Barker to represent us to try to, you
11 know, to try to figure out what the best way was to get the
12 creditors paid, and you know, move forward out of this.

13 Q So did you engage in negotiations with the debtor's
14 professionals and the committee's professionals?

15 A Yes, sir.

16 Q And did you get all the terms and conditions you wanted
17 under the Choctaw proposal worked under this plan, or was
18 there negotiations about those points?

19 A There was hours of negotiations. I believe your
20 partner, Mr. Bensinger has told me that we spent -- he did,
21 and I did with Mr. Solomon and his partner, Mr. Meek over 60
22 hours, you know, negotiating, you know, the unsecured
23 creditor's part of this plan.

24 And I really -- you know, one of the things I'm proud
25 of in this plan is I think it's really a collaborative plan,

1 and in the situation, you know, I think everybody is treated
2 fairly and equitably. Everybody -- our plan is, and of
3 course, it's an uncertain world, but our plan is, is that
4 everybody gets paid back a hundred cents on the dollar.

5 We have made -- you know, everybody has given and, you
6 know, a little bit. You know, we have made some concessions
7 to pay the unsecured creditors even before we get any money.
8 And as John Reardon more eloquently said, the administrative
9 professionals have been kind enough to give up a little bit,
10 and put some of their collections down the road.

11 So I feel like we have put together a plan that is
12 equitable to everybody, and everybody has had significant
13 input into that. You know, I think it's probably taken us
14 six or seven months working very diligently to get this plan
15 together. So everyone certainly has had input.

16 Q And you've invested a lot of time and money into
17 getting to where we are today, correct?

18 A Yes, sir.

19 Q Okay. Now, who -- tell the Court what is Choctaw
20 Telecommunications?

21 A Well, Choctaw Telecommunications and Choctaw Holdings
22 is an entity that was formed by certain of the secured
23 creditors, the ones you've mentioned, Mr. Hollis, Watson and
24 Downs Investments, Collateral Plus, and myself to -- you
25 know, to present or to be a part of the debtor's plan of

1 reorganization. We hope to go with the debtor to the FCC to
2 get Second Thursday under a plan that we've laid out to, you
3 know, to market the spectrum assets. And under the
4 provisions of the plan, pay off all the creditors.

5 Q Okay. Now, you talked a little bit earlier about
6 percentage ownership of some folks in Choctaw
7 Telecommunications, I don't think we've circled the loop
8 around. Can you tell the Court the ownership interests or
9 the membership interests in Choctaw Telecommunications among
10 the parties you just mentioned?

11 A Yes, sir, I will. Collateral Plus I is 45 percent
12 shareholder, Watson and Downs Investments, LLC is a 22 and a
13 half percent shareholder, Mr. Hollis is a 22 and a half
14 percent shareholder, and I am a 10 percent membership
15 holder.

16 Q Okay. Let me show you what I've put up on the screen.
17 That's titled Articles of Organization, Certification of
18 Formation of Choctaw Telecommunications LLC that shows a
19 recording stamp in Jefferson County, Alabama. This entity
20 is an Alabama limited liability company; is that correct?

21 A Yes, sir, it is.

22 Q And you authorized, and are the registered officer and
23 agent of this entity, correct?

24 A That's correct, yes, sir.

25 Q And you're listed under 8 as management, the person

1 serving as initial manager of the company is Patrick
2 Trammel, correct?

3 A Yes, sir, that's correct.

4 Q And then there's a third page, which is the State from
5 Alabama saying that that is an entity formed in Alabama,
6 correct?

7 A That's correct.

8 MR. LUPINACCI: Your Honor, I'd offer this as
9 Choctaw Exhibit No. 5.

10 THE COURT: Any objection?

11 (No response)

12 THE COURT: Hearing none, it'll be received into
13 evidence as Choctaw Exhibit 5.

14 (Choctaw's Exhibit No. 5 received)

15 BY MR. LUPINACCI:

16 Q Mr. Trammel, can you tell the Court, you mentioned
17 Choctaw Holding LLC. What is that?

18 A Well, under the terms of the plan, Choctaw Holdings
19 will be the entity that will actually hold the license. And
20 that is done for the benefit primarily of the unsecured
21 creditors, and to the extent, and we've had a lot of
22 conversation that's a little above my pay grade about
23 whether or not you can have security interest in licensed
24 assets or not, but I don't think anyone argues you have a
25 security interest in the proceeds. So whichever you can

1 get, we intend to provide that to the creditor's committee,
2 in order to ensure that, you know, we are prudent in the
3 management of those assets for their benefit.

4 Q I'm glad you raised that, and we'll go back in the
5 opening statement. The FCC made a comment that they were --
6 and I'm not trying to characterize their testimony, but as I
7 understand it, that they are comfortable with the language
8 in the DIP order about the grant of liens, but not their
9 perceived ambiguity in the plan. You're fine with the
10 language in the DIP order as far as the security interest
11 and proceeds, right?

12 A Yes, sir, that's correct.

13 Q All right. Let me show you what I've marked as Choctaw
14 Exhibit 6, which is similar documentation of Articles of
15 Organization related to Choctaw Holding, recorded in
16 Jefferson County, Alabama. Again, Choctaw Holding is an
17 Alabama LLC; is that correct?

18 A That's correct.

19 Q And you're the initial registered officer and agent?

20 A Yes, sir.

21 Q And you're the initial manager?

22 A Yes, sir.

23 MR. LUPINACCI: Your Honor, I'd offer Choctaw
24 Exhibit 6.

25 THE COURT: Any objection?

1 (No response)

2 THE COURT: It'll be received as Choctaw Exhibit
3 6.

4 (Choctaw's Exhibit No. 6 received)

5 BY MR. LUPINACCI:

6 Q Mr. Trammel, what is the ownership interest in Choctaw
7 Holding?

8 A Choctaw Holding is a hundred percent owned by Choctaw
9 Telecommunications, LLC.

10 Q Okay. Let me show you what I've put up here -- I've
11 marked as Choctaw Exhibit 7, which is from the IRS,
12 indicating they're assigned an employee identification
13 number to Choctaw Telecommunication. You're familiar that
14 that has occurred?

15 A Yes, sir.

16 MR. LUPINACCI: Okay. Your Honor, I'd offer
17 Choctaw Exhibit 7.

18 THE COURT: Any objection?

19 (No response)

20 THE COURT: Hearing none, it'll be received as
21 Choctaw Exhibit 7.

22 (Choctaw's Exhibit No. 7 received)

23 BY MR. LUPINACCI:

24 Q Let me show you what I've marked as Choctaw Exhibit 8,
25 Mr. Trammel, the operating agreement of Choctaw

1 Telecommunications. Are you familiar with that document?

2 A I am, yes, sir.

3 Q And this is the operating agreement governing that
4 Alabama LLC, correct?

5 A That's correct.

6 MR. LUPINACCI: Your Honor, I'd offer Choctaw
7 Exhibit No. 8.

8 THE COURT: Any objections?

9 (No response)

10 THE COURT: Hearing none, it'll be received as
11 Choctaw Exhibit 8.

12 (Choctaw's Exhibit No. 8 received)

13 BY MR. LUPINACCI:

14 Q All right. Mr. Trammel, does either Donald DePriest or
15 Sandra DePriest have any ownership interest in Choctaw
16 Telecommunications?

17 A No, sir.

18 Q Do either of them have any ownership interest in
19 Choctaw Holdings?

20 A No, sir.

21 Q Do either Donald DePriest or Sandra DePriest have any
22 involvement whatsoever in Choctaw Telecommunication?

23 A No, sir.

24 Q Do they have any involvement in Choctaw Holding?

25 A No, sir.

1 Q Will either Mr. or Mrs. DePriest receive any benefit
2 from Choctaw Telecommunication or Holding at all?

3 A No.

4 Q Under the Choctaw proposal in the debtor's plan, how
5 will Choctaw Telecommunication fund its operations?

6 A We have arranged to fund the operations through
7 additional member contribution through a line of credit,
8 that's to be provided post confirmation by Southeastern
9 Commercial Finance, and a -- they have -- the members have
10 also committed to a minimum additional funding as needed
11 going forward.

12 Q Now, let's start -- let's break that down. Does
13 Choctaw Telecommunication have any assets in its bank
14 account currently?

15 A Yes, sir. It has -- yes, sir, it's got assets in two
16 bank accounts.

17 Q And let me show you what we've marked as Choctaw
18 Exhibit 9. Can you tell the Court what that is?

19 A That is a deposit receipt from -- well, actually, it's
20 an account status report, I believe they might call it, from
21 Pinnacle National Bank in Nashville, Tennessee, which is the
22 lender for Choctaw Telecommunications.

23 Q Okay. And that is a bank account in the name of
24 Choctaw Telecommunications, correct?

25 A Yes, sir.

1 Q And it shows a balance of just under \$500,000, correct?

2 A That's correct.

3 MR. LUPINACCI: And, Your Honor, I'd offer Choctaw
4 Exhibit 9.

5 THE COURT: Any objection?

6 (No response)

7 THE COURT: Hearing none, it'll be received into
8 evidence as Choctaw Exhibit 9.

9 (Choctaw's Exhibit No. 9 received)

10 BY MR. LUPINACCI:

11 Q Okay. You mentioned I believe that Southeastern
12 Commercial Finance has agreed to provide funding to Choctaw
13 Telecommunication if the plan is confirmed?

14 A That's correct.

15 Q And can you tell the Court -- describe for the Court
16 what that proposed funding would be?

17 A Well, that proposed funding would be a couple of
18 things. One, it would be that half a million dollars you've
19 got right there, also the shareholders have committed to
20 another \$850,000. And then Southeastern Commercial will
21 provide a \$2 million line of credit loan to be drawn as
22 needed between now and Second Thursday.

23 Q Okay. And let me show you what I've marked as Choctaw
24 Exhibit No. 10. Can you tell the Court what that document
25 is?

1 A That is a commitment letter that was issued to Choctaw
2 Telecommunications.

3 Q By whom?

4 A By Southeastern Commercial Finance LLC.

5 Q And this is a commitment to fund an additional \$2
6 million, correct?

7 A That's correct.

8 Q Okay. Can you tell the Court what the terms are?

9 A Well, the terms are there's an interest rate of 5
10 percent. It is a one year term subject to annual renewal.
11 The -- you know, it's to be documented as a normal
12 commercial loan might be. You know, the line of credit is
13 secured by again, whatever we might get, although I do
14 understand that will be a second priority interest behind
15 the creditor's committee or the creditors as a group through
16 the administrative agent. And, you know, it's subject to
17 the confirmation of the reorganization plan.

18 Q And that's signed by Laura Byrd (ph) on behalf of
19 Southeastern Commercial Finance. Is she an officer of
20 Southeastern?

21 A She is.

22 Q And then it looks like you've signed it as managing
23 member of Choctaw Telecommunications, correct?

24 A That's correct.

25 MR. LUPINACCI: Your Honor, I'd offer this as

1 Choctaw Exhibit 10.

2 THE COURT: Any objection?

3 (No response)

4 THE COURT: Hearing none, it'll be received as
5 Choctaw Exhibit 10.

6 (Choctaw's Exhibit No. 10 received)

7 BY MR. LUPINACCI:

8 Q All right. Mr. Trammel, I believe you mentioned a
9 minute ago, and we talked about funding of the plan that
10 some of your -- some of the owners of Choctaw
11 Telecommunication that you previously identified have agreed
12 to commit to additional funding; is that correct?

13 A All of the owners.

14 Q All of the owners. Can you tell the Court what each of
15 those owners have agreed to?

16 A I believe -- well, myself, I've agreed to \$100,000. I
17 believe the others break down as to Collateral Plus will
18 fund up to \$375,000 or a minimum of that, if you read the
19 document. And Watson and Downs will commit to 187,500, as
20 will Mr. Hollis.

21 Q Okay. And let me show you, it's a four page exhibit,
22 and I'll have you identify each one. It looks like on
23 Choctaw letterhead, this page 1 is executed by Collateral
24 Plus, and it references in the last sentence that they have
25 a liquidity to and are committed to providing a minimum of

1 \$375,000 over the next 12 months for this purchase; is that
2 correct?

3 A For the purpose, yes, sir, of funding the company --

4 Q And that's --

5 A -- signed by Mr. Osteen (ph).

6 Q And that purpose is to proceed toward Second Thursday
7 approval?

8 A That's correct.

9 Q And page 2, I'll flip this over, is that a similar
10 letter, similar purposes by Mr. Hollis of \$187,500?

11 A It is.

12 Q And page 3, is that your letter on the same basis of
13 \$100,000?

14 A Yes, sir.

15 Q And page 4, is that a similar letter by Watson and
16 Downs for \$187,500?

17 A Yes, sir.

18 MR. LUPINACCI: Your Honor, I'd offer this as
19 Choctaw Exhibit 11.

20 THE COURT: Any objection.

21 (No response)

22 THE COURT: Hearing none, it'll be received into
23 evidence as Choctaw Exhibit 11.

24 (Choctaw's Exhibit No. 11 received)

25 BY MR. LUPINACCI:

1 Q Under the plan, who would manage Choctaw
2 Telecommunication?

3 A I will.

4 Q And under the plan, who will Choctaw Telecommunications
5 employ to carry on the day-to-day operations?

6 A That -- well, our current plan is Mr. Reardon who I
7 believe he's told you we have an employment agreement with.
8 We also anticipate at this time maintaining Mr. Tim Smith,
9 who is the company engineer and Ms. Sharon Watkins, who is
10 the company controller.

11 Q Okay. And you did hear earlier testimony by Mr.
12 Reardon that there's an employment contract between Choctaw
13 Telecommunication and Mr. Reardon, correct?

14 A There is.

15 Q And I'll show you what I'll mark as Choctaw Exhibit 12,
16 and ask you, is that the letter that Mr. Reardon referenced
17 earlier?

18 A I believe it is, yes, sir.

19 Q And then that has been signed by Mr. Reardon, correct?

20 A Yes, sir.

21 Q And you intend to sign that if the plan is confirmed,
22 correct?

23 A Well, I've already signed a copy for Mr. Reardon, and
24 I'd be glad to sign this if you'd like, if you'd like a
25 signed exhibit.

1 Q No, I'll just leave it as it is, but you intend that he
2 would not be employed unless the plan is confirmed, correct?

3 A That's correct.

4 MR. LUPINACCI: Your Honor, I'd offer Choctaw
5 Exhibit 12.

6 THE COURT: Any objection?

7 (No response)

8 THE COURT: Hearing none, it'll be received into
9 evidence as Choctaw Exhibit 12.

10 (Choctaw's Exhibit No. 12 received)

11 BY MR. LUPINACCI:

12 Q Now, does Mr. Reardon have any ownership interest in
13 Choctaw?

14 A No, sir.

15 Q In either Choctaw entity?

16 A No, sir.

17 Q Will Mr. Reardon receive any benefits under the Choctaw
18 plan?

19 A Other than salary and bonus and that type of thing,
20 other than employment benefits?

21 Q Other than employment, and I think he testified he had
22 a claim that would get paid hopefully, right?

23 A Well, yes, he's got a claim that if the Court deems as
24 a valid claim, then yes.

25 Q But beyond that, are there any agreements or

1 acknowledgements or any deals with Mr. Reardon other than
2 that letter agreement, and then whatever treatment his claim
3 gets under the plan?

4 A No, sir.

5 Q Okay. To your knowledge, has Mr. Reardon been
6 identified by the FCC as one of the bad actors in Maritime?

7 A No, he hasn't, to our knowledge. We've seen no
8 evidence of that.

9 Q Now, if the FCC were subsequently to identify Mr.
10 Reardon as potentially one of the bad actors in Maritime,
11 what rights would Choctaw have to terminate Mr. Reardon's
12 contract?

13 A Well, we would have right to terminate him for cause.

14 Q And I believe Mr. Reardon testified you'd have rights
15 to terminate him without cause for payment of severance,
16 correct?

17 A That's correct.

18 Q Would Choctaw exercise those rights to terminate him if
19 Mr. Reardon was identified as a bad actor by the FCC?

20 A Yes, sir, we would.

21 Q Okay. Do you have any reason to suspect as you sit
22 here today that the FCC would make such a determination
23 against Mr. Reardon?

24 A You know, Mr. Lupinacci, I'm not sure, you know, the
25 FCC world is new to me. You know, my counsel has gone --

1 our counsel at Wilkinson and Barker has gone through the
2 pleadings of the administrative law hearings and other
3 things, and as I'm told, and as I've seen to date, Mr.
4 Reardon has not been mentioned as a quote bad actor or a
5 person of interest or whatever.

6 So as I sit here today, based on my limited experience
7 then no, I don't think he's even been mentioned as a bad
8 actor at this point, and I hope he won't be.

9 Q Well now let's look forward assuming if the Court
10 approves the plan, and the plan is implemented, how would
11 the day-to-day operations of the business continue?

12 A Well, we've obviously put a lot of thought into, and
13 you know, how to make the business work as it should for the
14 benefit of everyone. And, you know, that's the secured
15 creditors, that's the unsecured creditors. And the
16 consistent thing that we have heard is, is you know, these
17 licenses have value to the right buyers, and I believe, you
18 know, Mr. Spencer's someone in here who represents one of
19 what we believe is the right buyers, but if you -- you know,
20 assuming we get Second Thursday, you know, that lifts the
21 cloud and we believe that, you know, we can market the
22 assets.

23 Now, you know, I will make an opinion here, you know,
24 in a bad situation, Mr. Reardon has done an outstanding job
25 on staying on task, staying in touch with the right people

1 to understand the market. And, you know, he would, as we go
2 forward with this, he would be, you know, very active in
3 doing what he's been doing.

4 Mr. Smith has been involved on the operational
5 engineering side of the company today, and he will continue
6 to do that. And Ms. Watkins has been involved on the
7 bookkeeping and controllership function, and she will
8 continue to do that.

9 You know, all the while under our direction or my
10 direction, you know, with counsel from the other members,
11 and supporting the business from a financial standpoint as
12 we have been doing during the -- you know, during the
13 Chapter 11 process.

14 Q Right. And you heard Mr. Reardon's testimony that the
15 current burn rate on operating expenses post confirmation
16 including paying the leases is about \$90,000 a month,
17 correct?

18 A Yes, sir, I do.

19 Q And you're -- the members of Choctaw are aware of that,
20 and have committed to fund that operation moving forward,
21 correct?

22 A That's right. And, you know, actually I've been
23 involved in kind of start-up turnaround businesses before,
24 and it's never worked out the way you've got it planned. I
25 would not be surprised if it's more than that. They

1 understand that, and we understand that, and we're prepared
2 for that.

3 Q And we just went through numbers in excess of \$3
4 million of commitments that are at the table to fund Choctaw
5 Telecommunications.

6 A That's correct.

7 Q All right. Now, is it your opinion that Choctaw
8 Telecommunications and Choctaw Holdings has engaged in good
9 faith negotiations with the debtor and the committee on this
10 plan?

11 A I believe we've engaged in good faith negotiations with
12 everyone up to, you know, up to and including CTI who's not
13 here today. You know, and I don't want to make an editorial
14 comment here, but you know, we have worked diligently with
15 everyone for a very long time, in what admittedly is a very
16 tough situation. And, you know, our only goal in this is to
17 get everyone paid back.

18 Now, you know, selfishly, you know, my friends, you
19 know, or my shareholders, Mr. Hollis, and Watson and Downs,
20 and other friends of mine, such as Mr. DuPree and some
21 unsecured creditors, you know, I want them paid them back
22 to. But -- and I do want the FCC to know that we intend to
23 pay you every nickel we owe you, okay. You know, this case
24 has been about, with several parties, you know, who's been
25 bad, who's done what. You know, we will be a good corporate

1 citizen, that's the way we run our other businesses, and
2 that's what we're going to do, and we're going to get
3 everybody paid back.

4 Q And you understand the risks and the obstacles you'll
5 face on Second Thursday with regard to Mr. Havens'
6 opposition, correct?

7 A You know, I do, and you know, Mr. Havens has certainly
8 a significant claim here, whether the Court deems it or not,
9 deems it valid, you know, or not, but if they are valid,
10 we're going to work just as hard to get Mr. Havens his claim
11 back too.

12 Q Now, what steps has Choctaw Telecommunication prepared
13 to take to obtain Second Thursday approval?

14 A Well, again, we have engaged Wilkinson Barker. Mr.
15 Kirk, I believe, will be questioning Mr. Feder in a little
16 while perhaps, and you know, we have worked with them
17 diligently to get prepared to, you know, go to the FCC.
18 Personally, I have spent many, many hours as a lay -- as
19 best as a layman can, to study the Second Thursday process,
20 to make sure that we're eligible for the Second Thursday
21 process, and make sure that, you know, we don't want to do
22 what's not in the best interests of the creditors. And
23 selfishly the creditors includes me.

24 We are not doing this on a lark. We're not doing this
25 for some pie in the sky, you know, the Choctaw shareholders

1 have funded the DIP, and they have put an additional \$1
2 million plus in there, and I assume before this process is
3 over, they'll put an additional million dollars in that in
4 it. And, you know, they've got along with NRTC and Mr.
5 DuPree, the secured creditors have 18 million reasons to
6 make this go, and we're committed to doing that, and we're
7 committed to doing that for the unsecured creditors, and the
8 administrative claimants and everybody else.

9 This is not something we have entered into lightly.

10 Q And again just to make sure it's on the record, the
11 DePriests get no payment under the Choctaw plan, correct?

12 A That's correct.

13 Q And they get no benefit under the Choctaw plan?

14 A That's correct.

15 Q And Choctaw -- and no member of Choctaw are involved in
16 any other business dealings with the DePriests, correct?

17 A That's correct.

18 Q In the event that the Choctaw operating funds that were
19 previously discussed run out, what financial resources does
20 Choctaw have to ensure that it will continue to proceed with
21 Second Thursday approval?

22 A Well, you know, this is not a forum for me to talk out
23 of school about other people, but the other Choctaw
24 shareholders have sufficient means to continue to fund this
25 to a successful conclusion.

1 Q And you've heard arguments at least earlier about that
2 there is not an absolute commitment in the plan to fund
3 until time and memorial; is that correct?

4 A That's correct.

5 Q And why is -- what -- can you talk to the Court about
6 that particular provision?

7 A Well, you know, obviously again, there's a lot of bad
8 stuff that's gone on in this, and it's time for everybody to
9 turn a page. And, you know, I'm assuming we've been told to
10 assume, and I've heard the Skytel letter mentioned a couple
11 of times, I've not seen that, but I've heard it mentioned in
12 there that they intend to appeal this.

13 Obviously we understand that will be a time hurdle that
14 will cost us \$90,000 a month. I don't think that's in the
15 best interests of the creditors. I don't think that's
16 really in the best interest of Mr. Havens. You know, in my
17 other businesses, and I don't know that Mr. Havens competes
18 with Maritime or not, but you know, we want to be, you know,
19 in my other businesses and in my business life, people that
20 are in the same business that I do are some of my better
21 friends. And to the extent we're competitors, and again I'm
22 not sure that we are, you know, I hope that we can be good
23 competitors. And I hope we can, you know, help each other
24 when appropriate.

25 With that being said, if this is, in fact, a case

1 where, you know, this is delayed, and you know, we have
2 appeals, and we have filings with the FCC of, you know,
3 applications for denial and all that, you know, we're
4 prepared for that, and we'll be prepared to go on.

5 Now, you know, we understand that this is a significant
6 commitment. You have \$3 million in front of you, privately
7 we have talked about this may be 5 to 7 to get this done,
8 and you know, we'll just have to do that. So if it takes 15
9 years, and you know, most of us have gone out of the world,
10 well, yeah, we're probably not going to do that, you know, I
11 don't have a written obligation to stay married to my wife,
12 but I have a commitment to her, and she has a commitment to
13 me. And I -- you know, and I have a commitment to my
14 children and everybody who's in this room that's in those
15 situations do too.

16 We have a commitment to this process. And again, we
17 have not entered into it lightly. You know, at some point,
18 it becomes a matter of is it in anyone's best interest for
19 our secured claim and the money to put in that, if it -- you
20 know, if it exceeds the value of the licenses, that's no
21 good for anybody. But to the extent that we have identified
22 this risk, we are highly committed to it, and we will see it
23 through.

24 Q You heard Mr. Reardon earlier talk about the various
25 buckets of payments under the plan to the creditors. You're

1 familiar with that, correct?

2 A Yes, sir.

3 Q And you negotiated that on behalf of Choctaw?

4 A Yes, sir.

5 Q And you're fully committed to make the payment under
6 that waterfall, correct?

7 A Yes, sir. And that's part of the reason that I, you
8 know, I think that -- with, you know, conversations between
9 me and Mr. Bensinger and Mr. Meek, you know, we really
10 insisted upon that administrative agent, because you know,
11 we want to be, you know, Caesar's wife here. We want to be
12 transparent to everybody, we want to represent everybody and
13 make sure everybody gets paid, and that's for the protection
14 of us as stewards of this, and it's also for the protection,
15 you know, of the creditors out here.

16 And so, you know, we have tried to craft a plan that is
17 fair, equitable and accountable, and we think we've done
18 that.

19 Q Now, under the plan, the first payment is \$250,000 to
20 the allowed administrative expense claimants, correct?

21 A That's correct.

22 Q And that's funded at confirmation, correct?

23 A That's correct.

24 Q And is that money already in escrow?

25 A That money is in escrow with the escrow account. I

1 assume it is. It's been sent. I assume we haven't spent
2 it.

3 MR. LUPINACCI: I will represent to the Court it's
4 in our ALTA account.

5 THE COURT: Okay.

6 Q Do you believe that the sale of licenses after Second
7 Thursday approval is secured, would pay off creditors in
8 full?

9 A Yes. And we believe that within a -- if we get Second
10 Thursday within a reasonable time frame, yes, we believe
11 that.

12 Q Now, is there any proposal under the Choctaw plan that
13 the DePriests are released of any guarantees?

14 A No, absolutely not.

15 Q Okay. And if you get paid in full will secured lenders
16 pursue Mr. DePriest?

17 A No. I'm not -- again, you're the bankruptcy counsel,
18 and the creditor's counsel, I don't know that you can if
19 you're paid in full.

20 Q I think this was talked about earlier but just so you
21 can state it on behalf of Choctaw, Choctaw is not seeking
22 anything in this Court to remove any authority or power or
23 oversight from the FCC, correct?

24 A You know, absolutely not. And the reality of it is,
25 with something as messy as this, you know, we need -- you

1 know, we want to be fully under the umbrella of the Court
2 and the FCC to help straighten this out. So, no, we're not
3 asking this Court to remove any sort of authority by the
4 FCC, and wouldn't if we could.

5 Q And you're not asking the Court or seeking under the
6 Choctaw plan to do anything with the New Jersey litigation
7 or the Court launder any claims of Mr. Havens, correct?

8 A No, sir. And I'm not really familiar with the New
9 Jersey litigation. My understanding is Mr. Havens has a
10 claim of some sort, and again I apologize, I don't know what
11 that is. And my general feeling on it is, if it turns into
12 a real claim, that's the basis for Mr. Havens' claim here in
13 the bankruptcy court, you know, if it turns into a real
14 claim, we'll pay it like we pay the rest of them.

15 Q Okay. Now, as a creditor of the debtor, have you
16 looked at and do you have an opinion if the debtor was
17 liquidated today, what kind of pay out the lenders would
18 receive in this case?

19 A Well --

20 MR. RUHL: I'm going to object, Your Honor. That
21 seems to me to call for either an expert opinion or some
22 opinion of value that I don't know that he's qualified to
23 give since it involves spectrum licenses.

24 MR. LUPINACCI: I'm not asking about that. I'm
25 asking about -- he's a secured lender, and an unsecured

1 creditor.

2 THE COURT: Well, he's certainly a party in
3 interest from two perspectives, secured and unsecured, so he
4 can say, he can give his opinion. Now whether, you know, it
5 all depends on what I understand it depends on what the
6 value of the assets are, but I will let him answer the
7 question.

8 BY MR. LUPINACCI:

9 Q What's your opinion?

10 A Would you ask the question again, Mr. Lupinacci,
11 please?

12 Q If the company was -- if Maritime was liquidated today,
13 do you have an opinion as to what kind of payment you would
14 receive as a secured lender and unsecured lender?

15 A Well, the only opinion I can render on that is based on
16 what I've seen since, you know, since the bankruptcy and my
17 limited -- you know, my limited observations before. You
18 know, once we're in the process with the ALJ and everything
19 else going on, and the continuous petitions to deny, I know
20 that at least since the filing of the bankruptcy there have
21 been \$10 million plus of contracts out there that not a
22 nickel's been collected on.

23 And, you know, even, even given the fact that, you
24 know, a lot of those licensed contracts like Mr. Spencer
25 represents are in very much the public interest, and you

1 know, it bothers me that there's a train running right now
2 that's not as safe as it could be.

3 Now, that's an editorial comment, but that's what I can
4 base an opinion on. And as an unsecured creditor, who's got
5 for what to me is a whole, whole lot of money in it, I don't
6 have a whole lot of confidence if you threw the doors open
7 and had a fire sale, you're going to get very far, and I'm
8 going to get a bunch of money back.

9 Q We heard some discussion earlier with Mr. Phillips and
10 his claim, I think the FCC asked for this as well. Your
11 testimony is that Choctaw will use its best efforts or
12 vigorously pursue obtaining FCC Second Thursday approval of
13 the transfer of the debtor's license, correct?

14 A That's correct. We intend to pursue Second Thursday
15 under the rules of the FCC, and follow the letter and the
16 spirit of the rules of the FCC in all cases.

17 Q And to try to get those contracts that you have out
18 there closed and get the money for the creditors?

19 A That's correct, absolutely.

20 Q Let me show you what I believe was Debtor's Exhibit 6
21 and page 26. There were some questions earlier about this
22 Section E, about the debtor and liquidating agent not
23 objecting to Class 1 through 8 claims, and are you familiar
24 with the negotiations that led to that provision?

25 A I am not as familiar with that, but I'm generally

1 familiar with that.

2 Q And did in the negotiation process with the debtor and
3 the unsecured creditor's committee, did those -- did the
4 debtor and the unsecured creditor's committee analyze the
5 secured lenders loan documents and priority positions, et
6 cetera?

7 A I believe they did, yes.

8 Q And is it your under -- well, was part of the
9 negotiations to implementation of this section of the plan
10 was, that since those entities had agreed, but the loan
11 documents were valid, the priority, the perfection was
12 valid, that there was no need to then object to those
13 claims?

14 A Right, yes, sir.

15 Q And Choctaw intends to market and pursue the highest
16 and best value for the sale of these licenses, correct?

17 A Yes, sir.

18 Q You do not intend to fire sale these licenses for \$1?

19 A No, sir. And again, not to be flippant, but the
20 secured creditors have about 18 million reasons not to do
21 that. And I'm an unsecured creditor, and I've got about
22 100,000 reasons not to do that.

23 MR. LUPINACCI: Your Honor, that's all the
24 questions I have for Mr. Trammel.

25 THE COURT: All right. Thank you. Mr. Geno, any

1 questions of the witness?

2 CROSS-EXAMINATION

3 BY MR. GENO:

4 Q Good afternoon, Mr. Trammel. Just to make it clear,
5 that the negotiations that occurred between your group, the
6 debtor, and the committee were vigorous and extensive, and
7 we had many, many hours of meetings, nights, holidays, and
8 weekends to try to hammer out the plan.

9 A Mr. Geno, as you know, I have talked to you at night so
10 much at 10 o'clock, my wife's wondering what's going on.

11 Q Mine, too. But thank you for saying that, I've got in
12 the record now.

13 And sometimes those negotiations were bitter and
14 heated, weren't they?

15 A Absolutely.

16 Q Sometimes people walked away from the table and said
17 they weren't coming back.

18 A That's correct, including us.

19 Q Sometimes people -- okay. Sometimes people change
20 their mind.

21 A Correct.

22 Q But the deal we have now before the Court is one that
23 was vigorously and thoroughly negotiated and agreed to by
24 all three of those constituents?

25 A And I would say this, and as you know, I've had issues

1 with a lot of this, but I can say this, I have never been in
2 a process that was more thorough and more vigorous on any
3 business negotiation in my business life. And I hope and
4 believe that what has come out of that as painful as it has
5 been, and I will point out, this is not my day job, I think
6 we've got something that's fair to everyone.

7 MR. GENO: Thank you, Mr. Trammel. Nothing
8 further, Your Honor.

9 THE COURT: Okay. Mr. Solomon, questions?

10 MR. SOLOMON: No questions, Your Honor.

11 THE COURT: All right. Mr. Spencer?

12 MR. SPENCER: No questions, Your Honor.

13 THE COURT: Mr. McCullough?

14 MR. MCCULLOUGH: Nothing, Your Honor.

15 THE COURT: Mr. Drew?

16 MR. DREW: Just a few, Your Honor.

17 THE COURT: All right.

18 CROSS-EXAMINATION

19 BY MR. DREW:

20 Q Good afternoon, Mr. Trammel.

21 A Hello.

22 Q You testified that the plan has no intention or has no
23 planned effect of interfering in any way with the FCC's
24 regulatory authority; is that correct?

25 A Yes, sir, that's correct.

1 Q You also testified that you plan to pay every nickel
2 you owe; is that correct?

3 A Every negotiated nickel we owe you, yes, sir.

4 Q Every negotiated nickel we owe. Well, can you tell us
5 then why the plan does not allow any regulatory fines and
6 forfeitures the FCC may impose which is at the very heart of
7 the FCC's power to regulate licenses?

8 A Okay. Let me explain this to you, Mr. Drew, as I
9 understand it, and I have been led by FCC counsel on this.
10 It's my -- and again, if I'm wrong, I apologize. But my
11 understanding is the basis of the \$6 million current FCC
12 claim is an unjust enrichment claim of some sort, I'm not
13 quite sure exactly what that means, it's a bid credit claim
14 that may be due from the DePriests and its penalties and
15 interest for that.

16 What I'm told is, is that that will be a condition to
17 clear that up and part of what I assume is some sort of
18 negotiation with the Wireless Bureau if they grant Second
19 Thursday or the full Commission of Second Thursday, and we
20 anticipate that that will be taken up by the FCC and we will
21 have to pay whatever is negotiated.

22 And I also have understood, and correct me if -- you
23 know, I also understand, whether I'm right or wrong, that
24 that \$6 million would be the maximum fine that could be
25 levied by the FCC's own rules. So, you know, it's my

1 understanding that the settlement of that is a function of
2 the Second Thursday approval. And therefore, is not
3 necessarily what we would call an unsecured claim for goods
4 or services rendered.

5 Now, you know, forgive me I'm not an FCC attorney, and
6 I'm not, you know, I'm not a bankruptcy attorney, but that's
7 my understanding of it. I'll be perfectly honest, I work a
8 little differently. When all this came up, I said, well,
9 let's sit down and work this out, but you know, they're
10 telling me that's what the story I've gotten is, but you
11 know, I want you both to know, assuming this goes forward
12 and we get Second Thursday, and again, you know, there's so
13 much of this you hear a license being revoked and Mr. Ruhl I
14 believe asked Mr. Reardon what if these licenses get
15 revoked, well, we're not going to get any licensed revoked,
16 because we're going to do -- we're going to follow the
17 rules.

18 And one of those rules is, we intend to pay whatever is
19 determined that we need to pay to get Second Thursday to
20 move forward, to get all these innocent creditors paid.

21 Q Mr. Trammel, I appreciate that statement of future
22 intentions, but I was asking why does the plan have a
23 provision that disallows penalties?

24 A I was advised by my bankruptcy counsel on that, Mr.
25 Drew, and I can't -- I'm sorry, I can't --

1 MR. DREW: Thank you.

2 THE WITNESS: Thank you, Mr. Drew.

3 THE COURT: Mr. Ruhl.

4 MR. RUHL: Thank you, Your Honor.

5 CROSS-EXAMINATION

6 BY MR. RUHL:

7 Q Mr. Trammel, good afternoon. I'm Danny Ruhl, I
8 represent Skytel.

9 A Yes, sir.

10 Q I just have a few I think or a handful of questions for
11 you.

12 I saw in the exhibits that have been put before the
13 Court, that Southeastern Commercial Finance has committed to
14 provide a line of credit to Choctaw in connection with its
15 obligations under the plan; is that right?

16 A That's correct.

17 Q Okay. Why, if you know, if you can tell me, was
18 Southeastern Commercial Finance willing to fund Choctaw but
19 wasn't willing to increase the post petition DIP financing
20 to the \$90,000 burn rate I guess of the debtors, so that the
21 debtor could move forward and try to seek Second Thursday?

22 A Now, the -- you know, there's some confusion about
23 that. My understanding when we did the DIP order, was that
24 the purpose of the DIP order was to pay or to keep the
25 company moving forward to preserve the value of the assets

1 for all the creditors.

2 I think perhaps, and I don't know this, Mr. Ruhl, but I
3 think perhaps there's some tower leases in there that would
4 get that up to the \$90,000. Well, you know, one, we never
5 got a good understanding of, and as you know, you've been
6 here before, these things happen fairly quickly, we
7 understood what we needed to pay was a payroll, the rents,
8 all that to get us here.

9 You know, going forward we certainly expect -- I expect
10 to either sit down with the FCC or find out ourselves, and
11 provide to the FCC exactly what we need to do to get
12 everything into compliance. But, you know, obviously I did
13 not think when -- and I don't remember when this was filed
14 maybe in August of '11 --

15 Q I think that's right.

16 A -- I did not expect we would be sitting here a week
17 before Thanksgiving. I thought we would be sitting here a
18 month before Thanksgiving 2011, and I thought we'd be
19 celebrating this reorganization and Alabama beating Auburn.
20 But -- so you know, we didn't know this would go on quite as
21 long as it did. We're committed to funding what we need to
22 fund, and that's all I can say about that.

23 I mean, we've never withheld -- you know, some months
24 we have funded \$55,000 a month, some months we've funded 75,
25 80, maybe that \$90,000 a month. So we've not, you know,

1 we've not done anything -- we tried to do the best we could
2 to keep the company and the assets viable until we could get
3 to this point and get to the Second Thursday point.

4 Q But what drove the decision though to use this or set
5 up the vehicle that's established in the plan for Choctaw to
6 be formed, to seek Second Thursday with the debtor and get
7 the licenses, as opposed to just continuing to fund the
8 debtor to do it themselves?

9 A You know, there was no grand plan of that. We
10 discussed it with our counsel, Wilkinson and Barker, and
11 their recommendation was, the best way to do this is, you
12 know, there is a provision in the FCC case law, called
13 Second Thursday, and the innocent creditors can get
14 together, you know, get the licenses, liquidate them for the
15 benefit of the creditors.

16 Now, as a practical matter, the truth, you know, one,
17 and this is in hindsight, if the DePriests are bad actors at
18 the FCC, how are they going to get Second Thursday. So it
19 has to have somebody that's not the DePriests, and we're not
20 the DePriests. And, you know, the notion that Council Tree
21 and others throw up that somehow there's some, you know,
22 grand scheme is ludicrous and is slanderous. We're
23 legitimate business people.

24 Now, having said that, if you are a secured creditor,
25 which I represent, and they had \$19 million invested in

1 this, and they haven't been -- they are three or four years
2 past due from being paid, would you want those assets in our
3 hands, or would you want them in the hands of people who had
4 gotten you here? And that's a decision you have to make
5 when you're looking at something like a Second Thursday.

6 And for us, and for the other creditors, we think we're
7 in the best position, and obviously nobody else has come up
8 with a better plan to take those assets, sell them for the
9 benefit of all the creditors. We think we can do that.
10 We're confident in our ability. We know what we're about.
11 We know how we're going to go about it, and that's why we
12 made that decision.

13 Q Okay. I think you testified earlier that you hadn't
14 seen the Skytel proposal; is that right?

15 A I have not, no, sir.

16 Q Okay. You said earlier that your or Choctaw's,
17 whoever's only goal is to get everyone paid back.

18 A That's our initial goal, immediate goal.

19 Q Okay. What about the long term goal? Is it part of
20 the goal to have some licenses or some value remaining at
21 the end of the day for Choctaw?

22 A You know, if that were to happen, that would be
23 wonderful, you know, I have heard that anybody makes a
24 million dollars in the restaurant business owns it at
25 minimum wage, maybe you've heard that. If I make any money

1 out of this, I'll have earned it less than minimum wage.

2 Right now we've got probably 30, 35 million, depending
3 on what happens with your friend and client, Mr. Havens,
4 maybe \$135 million of debt out there we've got to pay, and
5 that's what we need to focus on.

6 Any -- look, if the creditors get paid, and I'm going
7 to talk selfishly about the secured creditors. You know, my
8 friends are owed about \$18 million. And, you know, we
9 committed to slice that up to get the unsecureds some money
10 on the front end, and get the administrative people paid.
11 If we get that done, that's a good day's work. And let's
12 focus on that right now, let's block and tackle first, and
13 when we get that done, we'll see where we are.

14 Q What were the circumstances under which Mr. Hollis,
15 Robert Hayne Hollis, III and Watson and Downs Investments,
16 LLC obtained their secured debtor, lent money to the debtor?

17 A They were approached by Mr. DePriest, and he agreed --
18 they agreed to make a loan to him or to the company.

19 Q Do you have any other knowledge about those
20 negotiations or the circumstances in which they decided to
21 do that?

22 A There were two or three meetings prior to that. I was
23 at the first meeting, but I was not at the additional
24 meetings. Mr. Watson, who is a member of Watson and Downs
25 asked me to memorialize that, and I did that for them. But

1 that's -- I didn't -- I was not part of the negotiation.

2 Q Who are the members of the Watson and Downs?

3 A I don't know.

4 Q Do you know any of them?

5 A John Watson.

6 Q That's the only one you know?

7 A That's the only one I know.

8 Q Okay. Now, it's -- isn't it correct that the plan says
9 that the decision of whether to continue on with trying to
10 seek Second Thursday is in the sole discretion -- the sole
11 and absolute discretion I think are the words of Choctaw?

12 A Yes, sir.

13 Q Okay. And if Choctaw ever gets the licenses, the
14 decision of -- the market -- the decision to continue to
15 market and sell them, that's in the sole discretion of
16 Choctaw as well under the plan.

17 A That's correct.

18 Q Okay. Does this plan have any protections to ensure
19 that no benefit will ever go to any entity which -- in which
20 the DePriests are involved or may be involved in the future?

21 A I believe it -- well, let me say this. It makes a
22 representation of that. Certainly the members of Choctaw
23 are going to make a representation to that, to the FCC, as
24 part of the Second Thursday process.

25 We also I think importantly have been part of

1 formulating a plan that provides for an administrative
2 agent. So in fact, we're not going to touch the cash at all
3 until everybody's paid. It's going to the administrative
4 agent, and he's going to distribute it to the creditors
5 according to the plan.

6 So I don't know, you know, one you can believe what you
7 want to believe about our character, and we can do nothing
8 about that, except live in the way of the lights, we believe
9 we ought to live. But as a practical matter, why would we
10 set up a plan that we didn't get our -- that we didn't even
11 touch the cash if we were going to do all these sinister
12 things? And I know -- I know you're not asking the
13 question --

14 Q Yeah, are you asking me a question, I don't think --
15 I'm not under oath.

16 A I know you're not asking the question, yeah, that's
17 right. I know, I'm sorry.

18 MR. RUHL: I don't -- this was the Choctaw Exhibit
19 20 in the binder I just got from -- when you started
20 testifying for Mr. Bensinger, one of Choctaw's counsel, I
21 think it was admitted as a different exhibit.

22 MR. LUPINACCI: It was Exhibit 10.

23 MR. RUHL: Okay. Thank you.

24 BY MR. RUHL:

25 Q This is Exhibit 10, I'll flip over show you the first

1 page. This is the letter from Southeastern Commercial
2 Finance.

3 A Right.

4 Q I want to ask you about condition 1, funding on the
5 credit facility shall be subject to completion of additional
6 due diligence by the lender. Is that due diligence still
7 ongoing?

8 A No, sir, it's not.

9 Q Okay. So that condition has been satisfied?

10 A It has indeed. And, you know, what that is, and that's
11 very standards in the loans we make, we want to make sure
12 we're lending to legitimate corporate entities, and the
13 documents Mr. Lupinacci presented as exhibits are that due
14 diligence.

15 MR. RUHL: One moment, Your Honor.

16 (Pause)

17 Q This was another Choctaw exhibit, I'm not sure what it
18 was admitted as, but it was Choctaw Exhibit 2?

19 MR. LUPINACCI: This is 12 and then --

20 MR. RUHL: 12, okay, thank you.

21 Q I believe this was the employment contract you
22 testified to between Choctaw Telecommunications and Mr.
23 Reardon; is that right?

24 A Yes, sir.

25 Q Okay. My question is, in paragraph 3 it says, in part

1 that Choctaw will accurately support through court filings
2 and FCC advocacy measures, your, being Mr. Reardon's
3 unsecured claims for \$1.4 million related to sales
4 commissions on contracts executed before the Chapter 11
5 filing by MLCM.

6 A Yes, sir.

7 Q Can you tell what that means, the active support
8 through court filings necessary for advocacy measures?

9 A Well, the -- Mr. Reardon has -- I don't know if it's
10 combined in two, and I don't have it in front of me, but I
11 understand Mr. Reardon has two unsecured claims. One is
12 \$55,000 in bankruptcy and I believe he testified that he
13 went three months without being paid, and the other is a --
14 the other is a commission on sales for existing sales
15 contracts. And those sales contracts are listed there.

16 Q Do you know what it means by what court filings, FCC
17 advocacy measures are being referred to specifically?

18 A Well, I don't know exactly what court filings we could
19 make, but you know, I guess as a secured creditor and a
20 sponsor of the reorganization plan, and again I defer to
21 you. You know, I guess we have the ability to object to an
22 unsecured claim by someone, and what I mean by that, is we
23 don't intend to do that.

24 Obviously, and I have spoken to (indiscernible) and
25 Burris about our intention as it regards our relationship

1 with the FCC, you know, we -- I mean, we've not -- we've --
2 we obviously want Mr. Reardon involved in this business, and
3 I think anyone in this courtroom who's listened to him today
4 and in prior days would see why. And, you know, we intend
5 to, you know, through the Second Thursday process inform
6 them of that, and support him in, you know, whatever
7 investigation with him they need to do.

8 Q Okay. Do you recall the prior testimony regarding the
9 provision of the plan that as I read it, prohibits
10 objections to claims in Class 1 through 8?

11 A Yes, sir.

12 Q And I believe you said that the reason for that
13 provision is that different entities, Choctaw and the
14 unsecured creditor's committee maybe among others, did an
15 analysis and agreed that those claims are valid. Did I get
16 that right?

17 A You know, I don't exactly remember how Mr. Lupinacci
18 phrased that question, and I believe I said up front, I'm a
19 little hazy with that frankly.

20 Q Did you independently -- do you have independent
21 knowledge that an analysis was done, and a conclusion was
22 arrived at that all of those claims are valid and supported
23 by proper paperwork?

24 A My understanding of it was, is that everyone agreed the
25 secured claims were valid. Mr. DuPree's, NRTC, Mr. Hollis,

1 Mr. -- I mean, Watson and Downs, and Collateral Plus. The
2 -- I believe, and again, this is your area of expertise, not
3 mine, I believe the creditor's committee maintains, and I
4 believe the plan may say this, I know it's been discussed,
5 the administrative agent maintains the ability to object to
6 claims.

7 So I mean, I think there's a mechanism for doing that
8 for claims that are deemed not appropriate.

9 Q If I understand your testimony you're saying that
10 essentially that the secured creditors all agree that the
11 secured creditor's claims are valid and --

12 A No, sir, I think the creditor's committee agree with
13 that as part of the plan. I mean, I think Mr. Geno
14 characterized our discussions as vigorous, and I think
15 everything that could've been vetted has been vetted.

16 Q What I have before you is a copy of the first submitted
17 plan, page 26. Under E, reservation of right to object to
18 claims, it says, "the debtor and the liquidating agent
19 retain the right to object to claims through and including
20 90 days following FCC approval of any FCC spectrum license
21 sales; however, no objections can be filed as to the Class 1
22 through 8 claims after confirmation except by the
23 liquidating agent as to claims in Class 8."

24 So would you agree with me that the plan provides that
25 if the Court confirms the plan, there can be no objections

1 to claims in Class 1 through 7?

2 A Actually, I think that's what it says, and I can give
3 you -- my memory is coming back to me, I do remember this
4 conversation. I'd be glad to share it with you if it'd be
5 helpful.

6 Q Please do.

7 A There were -- can you leave that up there, just so I
8 can refer to it --

9 Q Yes, sir.

10 A -- if I need to.

11 There was a discussion between myself, I believe it was
12 Mr. Meek, I don't know if Mr. Solomon was in the room, and
13 Mr. Bensinger. And the question was, how long -- you know,
14 when can we object to claims. And it wasn't for us, it was
15 for the creditor's committee, because you know, clearly
16 everybody wants to pay legitimate claims, and as is there a
17 finite amount of assets available here, you know, you want
18 to pay the right people, you want to do the right thing.
19 That's what we're all here to do.

20 And I think, you know, we had discussed how long that
21 window would be, because you don't want to come up five
22 years later if it takes that long, and say, oh, that's not a
23 claim. So I think Mr. Meek, and I don't want to speak for
24 Mr. Meek, but I think what he said, is look, once we get FCC
25 approval of a license, we ought to have it all scrubbed out

1 by then. So let's agree that, you know, we do this, you
2 know, (indiscernible) days after approval, we can do that,
3 and after that, we're done with it. And I said, if you want
4 to do that, that's fine. That's my memory of it, and that
5 is probably from April.

6 Q Okay. So you wouldn't have a problem -- so Choctaw
7 wouldn't have a problem with the second sentence in that
8 paragraph being taken out?

9 A I would have to talk to my counsel about that, I'm not
10 up here -- I rely -- Moses leaned on his staff, and I lean
11 on my law firms.

12 Q Okay. Is that the extent of your memory on the
13 negotiation of that provision?

14 A I think that is, yes, sir. I wish I was smarter and
15 knew what the point was of that, but anyway.

16 MR. RUHL: That's all the questions I have, Your
17 Honor. Thank you, Mr. Trammel, sir.

18 THE WITNESS: Thank you, sir.

19 THE COURT: Mr. Lupinacci, redirect?

20 MR. LUPINACCI: We're fine, Your Honor.

21 THE COURT: All right. You may stand down, Mr.
22 Trammel, thank you.

23 THE WITNESS: Thank you, Your Honor.

24 THE COURT: Call your next witness.

25 MR. LUPINACCI: Your Honor, our next witness will

1 be Mr. Feder and Mr. Kirk will do that direct examination.

2 THE COURT: All right. Mr. Feder, come around and
3 let the clerk administer the oath.

4 SAMUEL FEDER, WITNESS, SWORN

5 THE COURT: Have a seat. Mr. Kirk.

6 DIRECT EXAMINATION

7 BY MR. KIRK:

8 Q Thanks for being here with us this afternoon. Can you
9 state your name for the record, please?

10 A Samuel L. Feder.

11 Q Have you been retained to render an expert opinion in
12 this case?

13 A Yes, I have.

14 THE COURT: Excuse me just a minute, would you
15 mind spelling your last name for the record?

16 THE WITNESS: Sure, it's F like Frank, E-d-e-r.

17 THE COURT: Got it, thank you. Go ahead.

18 Q Where do you live?

19 A McLean, Virginia.

20 Q And can you describe your educational background?

21 A Sure. I have an under graduate degree from the College
22 of William and Mary, and a JD from the University of
23 Michigan.

24 Q Have you reached an opinion concerning applicability of
25 the FCC Second Thursday policy to the Choctaw bankruptcy

1 proposal?

2 A Yes, I have.

3 Q And how long have you practiced communications law?

4 A Conservatively since about 1998, that's when I -- I had
5 done some communications work at the Justice Department
6 prior to that, but that's when I went to a communications
7 law firm. I've done communications consistently since then,
8 and I'm now Chair of the Communications Practice at the law
9 firm of Jenner and Block.

10 Q And during your career, have you served at the FCC?

11 A Yes, I have. I was at the FCC for seven years from
12 2001 to 2008. From 2005 to 2008, I served as the FCC's
13 general counsel and from 2001 to 2005, I served as a legal
14 and policy advisor to two different FCC commissioners.

15 Q And can you describe your responsibilities as both an
16 advisor and general counsel?

17 A Sure. As general counsel I advised the chairman and
18 the commissioners and senior staff on all serious legal
19 issues before the agency in rule making decisions, and
20 otherwise, I managed litigation in federal courts,
21 supervising other attorneys, and litigating myself
22 occasionally.

23 I coordinated the agency's review of all transactions
24 requiring FCC approval and I advised on other significant
25 legal issues before the agency. Prior to that, when I was a

1 legal and policy advisor to the commissioners, I advised on
2 all legal issues and policy issues involving matters before
3 that commissioner within my area of focus. For most of that
4 time, my area of focus was wireless and spectrum matters.

5 Q And during your career and tenure at the FCC, did you
6 have an opportunity to deal with Second Thursday?

7 A Yes, I did.

8 Q Can you describe in a little bit more detail what you
9 did?

10 A A number of times when I was general counsel, I
11 remember the issue came up in conjunction with bankruptcy
12 proceedings and, you know, I don't remember the exact
13 details, but I know I was aware of the doctrine, and you
14 know, occasionally rendered some advice about it.

15 MR. KIRK: Your Honor, we tender Mr. Feder as an
16 expert witness regarding FCC policy and procedure, including
17 the Second Thursday Doctrine.

18 THE COURT: Any objections or voir dire of the
19 witness?

20 (No response)

21 THE COURT: Hearing none, the Court will accept
22 Mr. Feder as an expert witness in FCC's policies and
23 procedures and the Second Thursday Doctrine.

24 BY MR. KIRK:

25 Q Are you familiar with the Jefferson Radio case?

1 A Yes, I am. That's the case that stands for the
2 proposition that when an FCC licensee's qualifications to
3 hold licenses is called into question before the FCC, the
4 FCC will generally not approve transfer of those licenses.

5 Q And how does that case apply here to MCLM?

6 A It applies here because the licenses held by Maritime
7 are -- have been designated for hearing as to whether some
8 or all of those licenses should be forfeited for failure to
9 hold the necessary qualifications.

10 Q Are there any exceptions to this policy that would
11 apply to Maritime?

12 A There are, the Second Thursday exception.

13 Q Can you describe the Second Thursday exception?

14 A Sure. The Second Thursday Doctrine will allow the FCC
15 to approve the transfer of licenses even when and the
16 qualifications of the licensee to hold them has been called
17 into question if three conditions are met.

18 First, the licensee must be in bankruptcy. Second, the
19 alleged wrongdoers must not participate in any way in the
20 ongoing business of the transferee. And third, the alleged
21 wrongdoers must receive no benefit from the relief, or only
22 a minor benefit that is outweighed by the equities of
23 providing relief to innocent creditors.

24 Q Have you reviewed the Choctaw plan before the Court?

25 A Yes, I have.

1 Q And were you in court today observing the testimony of
2 Mr. Trammel?

3 A Yes, I was.

4 Q Based on the Choctaw plan that you reviewed and the
5 testimony of Mr. Trammel, do you believe that the factors of
6 Second Thursday would be met?

7 A I do.

8 Q Can you explain why?

9 A Sure. Obviously, Maritime's in bankruptcy, that's why
10 we're here. We've seen assurances that the alleged
11 wrongdoers identified by the FCC, Mr. and Mrs. DePriest are
12 not going to be involved in the ongoing operations of
13 Choctaw, and number three, we've heard of no material
14 benefits that would be provided to those alleged wrongdoers.

15 Q And various parties today have argued that Second
16 Thursday would be inappropriate because bankruptcy plans
17 would result in a windfall. Do you agree with that
18 analysis?

19 A I do not agree with that analysis.

20 Q Can you provide an explanation?

21 A Sure. I mean, I've reviewed a lot of FCC Second
22 Thursday decisions, and I've never seen that even be a
23 consideration. The question is whether the wrongdoers are
24 getting a benefit, this -- you know, the questions of what
25 innocent creditors might receive would be a question for the

1 bankruptcy court.

2 Q And does the FCC review the financial situation of the
3 entity applying for the licenses under Second Thursday or do
4 they defer to the bankruptcy court's determination?

5 A They would defer to the bankruptcy court's
6 determination.

7 Q Are you aware of any case where the FCC has denied
8 Second Thursday relief where the three factors you
9 referenced have been satisfied?

10 A I am not. Where those three factors are satisfied, the
11 FCC's awarded relief in every case.

12 Q And does the FCC view, at least from personal
13 guarantees, to be a significant benefit that would foreclose
14 Second Thursday relief?

15 A Generally it does not. A number of cases that has been
16 present, and the agency has said, it's a minor or indirect
17 benefit that's outweighed by the equities of providing
18 relief to innocent creditors.

19 Q In your opinion, would Second Thursday relief be
20 quicker than pursuing through the full hearing process,
21 pursuant to the hearing designation order?

22 A Yes, I absolutely think it would. There's one
23 administrative law judge at the FCC who currently has at
24 least one hearing in front of the what -- the hearing that
25 would take place here, so I don't think the hearing were the

1 -- were Maritime to go forward with that would even begin to
2 take place for any number of months. You then would have a
3 very lengthy hearing, and then at the end, the ALJ would
4 issue an opinion. There would then be time for parties to
5 object to that before the FCC actually issued an opinion.

6 If Second Thursday relief were pursued, an application
7 would be filed, there would be no hearing, it would be, you
8 know, objections would be heard in writing, there would be
9 some meetings, and the agency would issue a decision.

10 MR. KIRK: Thank you, Mr. Feder, no further
11 questions, Your Honor.

12 THE COURT: All right. Mr. Geno, examination of
13 this witness?

14 MR. GENO: I don't think so, Your Honor.

15 THE COURT: I don't blame you. Mr. Solomon?

16 MR. SOLOMON: No questions, Your Honor.

17 THE COURT: Okay. Mr. Spencer?

18 MR. SPENCER: No questions, Your Honor.

19 THE COURT: Mr. McCullough?

20 MR. MCCULLOUGH: No questions, Your Honor.

21 THE COURT: Mr. Drew?

22 MR. DREW: No questions.

23 THE COURT: Mr. Ruhl?

24 MR. RUHL: No questions, Your Honor.

25 THE COURT: Well, you've sufficient wowed

1 everybody, so you may stand down.

2 Call your next witness?

3 MR. LUPINACCI: We have no further witnesses on
4 behalf of Choctaw, so I guess I hand back to Mr. Geno.

5 MR. GENO: The only other witness we have is Ms.
6 DePriest, Your Honor, who will be here in the morning.

7 THE COURT: All right. Well, it's 5:30, I'd
8 actually intended to go a little bit longer, but we will
9 call the recess at this time. We will -- I'm not sure where
10 all of you staying, but we can start at 9:30, if you'd
11 prefer doing that in the morning, that makes it a little bit
12 better, and tee it up then unless that's a problem.

13 MR. GENO: That's perfect for us, Your Honor.

14 THE COURT: 9:30. 9:30 in the morning it is then.

15 Thank you. Court's in recess until that time.

16 (Proceedings recessed at 5:30 p.m.; to reconvene at 9:30
17 a.m., November 15, 2012.)

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CERTIFICATION

I, Sheila G. Orms, certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter.

Dated: November 30, 2012



Signature of Approved Transcriber

Veritext

200 Old Country Road

Suite 580

Mineola, NY 11501

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